

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA

Plaintiff

vs.

CA No. 1:23-CV-00853-DAE

GREG ABBOTT, in his capacity as
GOVERNOR OF THE STATE OF TEXAS,
and THE STATE OF TEXAS

Defendants

DEPOSITION of THOMAS CIARAMETARO

Tuesday, July 9, 2024 - 9:22 a.m.

US Attorney's Office for the

District of Massachusetts

1 Courthouse Way, Suite 9200

Boston, Massachusetts 02210

Reporter: Jill K. Ruggieri, RPR, RMR, FCRR, CRR

Job No. CS6783958

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 U.S. Department of Justice</p> <p>4 Environment and Natural Resources Division</p> <p>5 Environmental Defense Section</p> <p>6 Brian H. Lynk, AUSA</p> <p>7 PO Box 7611</p> <p>8 Washington, District of Columbia 20044-7611</p> <p>9 202.514.6187</p> <p>10 brian.lynk@usdoj.gov</p> <p>11 Counsel for the United States of</p> <p>12 America, et al.</p> <p>13</p> <p>14 Texas Office of the Attorney General</p> <p>15 Munera Al-Fuhaid, AAG</p> <p>16 300 W. 15th Street</p> <p>17 Austin, Texas 78701</p> <p>18 512.463.2100</p> <p>19 munera.al-fuhaid@oag.texas.gov</p> <p>20 Counsel for defendants</p> <p>21</p> <p>22 Also present: John Timmel</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 (Exhibit 1 marked for</p> <p>4 identification.)</p> <p>5 (Exhibit 2 marked for</p> <p>6 identification.)</p> <p>7</p> <p>8 THOMAS P. CIARAMETARO, a witness</p> <p>9 having been duly sworn, on oath deposes and</p> <p>10 says as follows:</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2</p> <p>3 WITNESS:</p> <p>4</p> <p>5 THOMAS P. CIARAMETARO</p> <p>6 Examination by Mr. Lynk 4, 168</p> <p>7 Examination by Ms. Al-Fuhaid 148</p> <p>8</p> <p>9 EXHIBITS</p> <p>10</p> <p>11 Exhibit 1 Expert Witness Report 4</p> <p>12 Exhibit 2 Summary Report 4</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 EXAMINATION</p> <p>2 BY MR. LYNK:</p> <p>3 Q Would you please state your name for</p> <p>4 the record.</p> <p>5 A Thomas P. Ciarametaro, Jr.</p> <p>6 Q And have you submitted an expert</p> <p>7 report in a case called United States v.</p> <p>8 Abbott?</p> <p>9 A I have.</p> <p>10 Q I'm going to hand you what's been</p> <p>11 marked as Exhibit 1.</p> <p>12 MR. LYNK: And here's a copy.</p> <p>13 MS. AL-FUHAID: Thank you.</p> <p>14 BY MR. LYNK:</p> <p>15 Q Just take a look at that. See if you</p> <p>16 recognize it.</p> <p>17 A I do.</p> <p>18 Q And this is a 42-page document titled</p> <p>19 "Expert Witness Report" with your name on the</p> <p>20 front; is that right?</p> <p>21 A Yes, sir.</p> <p>22 Q And as you look through that, let me</p> <p>23 know if you recognize that to be an accurate</p> <p>24 copy of your report in this case.</p> <p>25 A All appears to be here, sir.</p>

<p style="text-align: right;">Page 6</p> <p>1 Q And I'll ask some more questions</p> <p>2 about it later, but just in general, that</p> <p>3 report -- have you done any further report in</p> <p>4 this case since this one, which I believe is</p> <p>5 dated June 14th?</p> <p>6 A I have not.</p> <p>7 Q And are you currently preparing any</p> <p>8 additional opinions beyond those that are set</p> <p>9 forth in this report?</p> <p>10 A I am not.</p> <p>11 Q And as of today, would you consider</p> <p>12 this to be a complete statement of your expert</p> <p>13 opinions in the case?</p> <p>14 A For the information I've received so</p> <p>15 far, yes.</p> <p>16 Q Okay.</p> <p>17 And I'll hand you what's been</p> <p>18 marked as Exhibit 2.</p> <p>19 A Okay.</p> <p>20 (The deponent read the</p> <p>21 document.)</p> <p>22 BY MR. LYNK:</p> <p>23 Q And this document -- would I be</p> <p>24 correct in describing it as running from a</p> <p>25 page 36 to page 42 of 42, and as having a --</p>	<p style="text-align: right;">Page 8</p> <p>1 A Yes.</p> <p>2 Q And I believe on Exhibit 2, there is</p> <p>3 a list of some cases in which you've given</p> <p>4 testimony; is that right? Specifically --</p> <p>5 A A list of cases that I've worked on.</p> <p>6 Q Got it. So this would be Exhibit 2,</p> <p>7 page 39 of 42, is there a list starting near</p> <p>8 the bottom of that page with the heading "Case</p> <p>9 Involvement"?</p> <p>10 A Correct.</p> <p>11 Q And the first two matters listed</p> <p>12 there with bullets, each have a parenthetical</p> <p>13 at the end that says "Federal Officer"; is that</p> <p>14 right?</p> <p>15 A Correct.</p> <p>16 Q Can you explain what's meant in those</p> <p>17 instances with the parenthetical?</p> <p>18 A Yes, sir. I was a US Coast Guard</p> <p>19 boarding officer involved in these two cases.</p> <p>20 That's it.</p> <p>21 Q Okay.</p> <p>22 Were those -- did you give</p> <p>23 testimony in either of those?</p> <p>24 A The second one, I did.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 7</p> <p>1 what appears to be a court case information at</p> <p>2 the top?</p> <p>3 A Yes.</p> <p>4 Q And specifically case</p> <p>5 1:23-cv-00853-DAE, and then it says</p> <p>6 "Document 122-5," filed June 14, 2024; is that</p> <p>7 accurate?</p> <p>8 A Yes.</p> <p>9 Q It has your name at the top, and it</p> <p>10 appears to be your CV?</p> <p>11 A Correct.</p> <p>12 Q And having looked at it, do you</p> <p>13 recognize it as an accurate copy of your CV?</p> <p>14 A I do.</p> <p>15 Q Sitting here today, you know, about</p> <p>16 three weeks later, would you say this is still</p> <p>17 an up-to-date copy of your CV?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 So there's nothing you would --</p> <p>21 if you were writing it now, there is nothing</p> <p>22 you would add at this moment to that list?</p> <p>23 A No.</p> <p>24 Q Okay.</p> <p>25 Have you been deposed before?</p>	<p style="text-align: right;">Page 9</p> <p>1 A Deposition testimony.</p> <p>2 Q And then the next bullet, and it</p> <p>3 appears the ones afterward, each have a</p> <p>4 parenthetical that says "Expert Witness"; is</p> <p>5 that right?</p> <p>6 A Correct.</p> <p>7 Q And then continuing on the next page,</p> <p>8 I see three more cases bulleted with that</p> <p>9 parenthetical as well; is that right?</p> <p>10 A Correct.</p> <p>11 Q So those are all cases in which you</p> <p>12 have provided services as an expert witness?</p> <p>13 A Yes, sir.</p> <p>14 Q And did you write an expert report in</p> <p>15 all of those cases?</p> <p>16 A Some of them are ongoing, and I have</p> <p>17 not completed an expert report. One of them, I</p> <p>18 believe. I would say 98 percent of them, I did</p> <p>19 write some kind of report for.</p> <p>20 Q And have you given testimony in any</p> <p>21 of those cases?</p> <p>22 A I have not.</p> <p>23 Q And are these all cases that are</p> <p>24 occurring or have occurred in the last four</p> <p>25 years?</p>

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<p>1 A Some of them, I think, are a little</p> <p>2 older than four years, and some of them are</p> <p>3 happening now, including this one that I have</p> <p>4 listed.</p> <p>5 Q And if you -- if you were giving a</p> <p>6 complete list of cases in which you have</p> <p>7 testified as an expert in the past four years,</p> <p>8 would there be anything else you'd need to list</p> <p>9 that's not here?</p> <p>10 A No.</p> <p>11 Q Okay.</p> <p>12 Roughly how many expert reports</p> <p>13 would you say that you have written in cases to</p> <p>14 date, including the one -- this case?</p> <p>15 A Six to eight. Maybe a little -- I</p> <p>16 could count them out, actually.</p> <p>17 (Pause.)</p> <p>18 A Seven.</p> <p>19 Q So seven including the current expert</p> <p>20 report in this case?</p> <p>21 A Do I have it listed here?</p> <p>22 (The deponent read the</p> <p>23 document.)</p> <p>24 A I guess this would make eight.</p> <p>25 Q And including today, in how many</p>	<p>1 not to answer, it's still then your obligation</p> <p>2 to answer the question if you know.</p> <p>3 Do you understand that?</p> <p>4 A Yes, sir.</p> <p>5 Q We will all, of course, try -- I'll</p> <p>6 try not to talk over your answer. You'll try</p> <p>7 not to talk over her objection or my question,</p> <p>8 et cetera, and we'll try to keep the record as</p> <p>9 clean as we can.</p> <p>10 Are you ready to do that?</p> <p>11 A Yes, sir.</p> <p>12 Q Are you on any medication today that</p> <p>13 you believe might affect your memory?</p> <p>14 A I am not.</p> <p>15 Q Are you on any medication today that</p> <p>16 you believe might affect your ability to</p> <p>17 testify truthfully and accurately?</p> <p>18 A No.</p> <p>19 Q Any other reason you would not be</p> <p>20 able to testify truthfully or accurately today?</p> <p>21 A No.</p> <p>22 Q Did you do anything to prepare for</p> <p>23 today's deposition?</p> <p>24 A I went over my expert report and</p> <p>25 spoke with the attorney sitting next to me.</p>
Page 11	Page 13
<p>1 cases have you given testimony as an expert?</p> <p>2 A Just today.</p> <p>3 Q So let's -- you have -- okay.</p> <p>4 So this is your first time</p> <p>5 testifying as an expert, and you've mentioned</p> <p>6 involvement in cases as a federal officer.</p> <p>7 Probably worth going through just some of the</p> <p>8 basics.</p> <p>9 Obviously I'll be asking you a</p> <p>10 series of questions today. Do you understand</p> <p>11 that?</p> <p>12 A Yes, sir.</p> <p>13 Q You know that you're testifying under</p> <p>14 oath, right?</p> <p>15 A Correct.</p> <p>16 Q And your obligation is to give an</p> <p>17 honest answer if you know an answer to the</p> <p>18 question?</p> <p>19 A Yes, sir.</p> <p>20 Q At times, you may hear an objection</p> <p>21 from the attorney that's next to you.</p> <p>22 You realize that, correct?</p> <p>23 A Correct.</p> <p>24 Q After an objection has been given,</p> <p>25 unless you -- unless she were to instruct you</p>	<p>1 Other than that, no.</p> <p>2 Q How many times did you -- or how many</p> <p>3 occasions did you speak with your attorney to</p> <p>4 prepare for the deposition?</p> <p>5 A Four.</p> <p>6 Q And about how much time would you say</p> <p>7 you spent preparing for today's deposition?</p> <p>8 A In total?</p> <p>9 Q Yes.</p> <p>10 A Probably eight hours.</p> <p>11 Q And how much time would you say that</p> <p>12 you spent on the work that led to completion of</p> <p>13 the expert report, Exhibit 1, that we looked</p> <p>14 at?</p> <p>15 A Between 80, 90 hours, I would say.</p> <p>16 Q Okay.</p> <p>17 A Give or take on either side of that.</p> <p>18 I'd have to look back to get exact number, but</p> <p>19 that's my estimate.</p> <p>20 Q Was there -- do you recall a point in</p> <p>21 time when you were first contacted to consider</p> <p>22 providing services as an expert in this case?</p> <p>23 A I do.</p> <p>24 Q About when was that?</p> <p>25 A I believe that was in April of 2024.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q And are you directly retained by the</p> <p>2 State of Texas or in some other fashion?</p> <p>3 A Some other fashion.</p> <p>4 Q Okay.</p> <p>5 Could you explain that, please?</p> <p>6 A I believe it's the expert -- I'd say</p> <p>7 it's listed in here. So I don't want to get</p> <p>8 the name wrong for the record.</p> <p>9 Q "In here" meaning Exhibit 1?</p> <p>10 A In Exhibit 1, yes, sir. I get</p> <p>11 confused with the two different companies.</p> <p>12 This one is ExpertConnect Litigation Support</p> <p>13 LLC.</p> <p>14 Q So you were contacted initially</p> <p>15 sometime in April 2024. And did you commence</p> <p>16 your work as an expert in that same month?</p> <p>17 A I did not.</p> <p>18 Q Were you then contacted at a later</p> <p>19 date before you began working as an expert?</p> <p>20 A I was.</p> <p>21 Q Okay.</p> <p>22 About when was that?</p> <p>23 A I believe it was in early May. Maybe</p> <p>24 it was the end of April. I'm not 100 percent</p> <p>25 sure on the date, but between the end of April</p>	<p style="text-align: right;">Page 16</p> <p>1 Fathoms Consulting? This was just your own</p> <p>2 work?</p> <p>3 A My own work, yes, sir.</p> <p>4 Q And at the time you began, roughly</p> <p>5 the last week of May or so, to work on the</p> <p>6 case, did you have in mind an understanding of</p> <p>7 what is the scope of what I am considering as</p> <p>8 an expert?</p> <p>9 A Yes, I did.</p> <p>10 Q Okay.</p> <p>11 Could you explain what your</p> <p>12 understanding was?</p> <p>13 A My understanding was to determine if</p> <p>14 the Rio Grande River was a navigable waterway,</p> <p>15 if it was suitable for navigation period and/or</p> <p>16 commercial navigation purposes.</p> <p>17 And I was also asked to give an</p> <p>18 opinion on the effectiveness of the buoy</p> <p>19 barrier that is placed in the Rio Grande River</p> <p>20 currently.</p> <p>21 Q And you consider yourself to have the</p> <p>22 requisite expertise to develop opinions on each</p> <p>23 of those subjects?</p> <p>24 A Yes, I do.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 15</p> <p>1 and early May.</p> <p>2 Q Okay.</p> <p>3 In that time frame, generally?</p> <p>4 A Yes, sir.</p> <p>5 Q And is that the point where you began</p> <p>6 to actually work on an assignment as an expert</p> <p>7 witness?</p> <p>8 A I had not yet.</p> <p>9 Q So when was the next point in time</p> <p>10 after that that you were in contact with Texas</p> <p>11 about potentially working on the case?</p> <p>12 A I officially started working on the</p> <p>13 case for Texas, I believe it was the last week</p> <p>14 in May.</p> <p>15 Q So earlier, when you were saying</p> <p>16 rough estimate 80 to 90 hours or so of work</p> <p>17 leading to the report, would you say that --</p> <p>18 are you referring to what you had done from the</p> <p>19 last week of May forward?</p> <p>20 A Yes, sir.</p> <p>21 Q Other than yourself, was there anyone</p> <p>22 else at Five Fathoms Consulting who assisted in</p> <p>23 putting together the report?</p> <p>24 A No.</p> <p>25 Q And no one else outside of Five</p>	<p style="text-align: right;">Page 17</p> <p>1 Can you explain, in your mind</p> <p>2 what is the expertise that qualifies you to</p> <p>3 determine if the Rio Grande is a navigable</p> <p>4 waterway?</p> <p>5 A I've had a commercial captain's</p> <p>6 license for 16 years, I believe. I have</p> <p>7 been -- I have 11 years' active duty experience</p> <p>8 in the United States Coast Guard as a</p> <p>9 boatswain's mate.</p> <p>10 I am currently a chief</p> <p>11 boatswain's mate in the US Coast Guard</p> <p>12 Reserves, and I'm the senior enlisted Reserve</p> <p>13 officer at Coast Guard Station Gloucester.</p> <p>14 I was a navigation and</p> <p>15 operations officer on a Coast Guard patrol</p> <p>16 boat, a variety of other qualifications that</p> <p>17 are listed throughout my CV.</p> <p>18 Q Can you explain a bit more about your</p> <p>19 commercial captain's license?</p> <p>20 Does it license you to captain</p> <p>21 boats up to a certain tonnage?</p> <p>22 A It does.</p> <p>23 Q And what is that?</p> <p>24 A One hundred gross tons.</p> <p>25 Q Okay.</p>

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<p>1 Have you ever sought a license</p> <p>2 to captain vessels with a higher tonnage than</p> <p>3 100 gross tons?</p> <p>4 A I have not.</p> <p>5 Q Do you have -- have you ever</p> <p>6 captained a vessel carrying commercial cargo?</p> <p>7 A I have.</p> <p>8 Q You have?</p> <p>9 A (Nods.)</p> <p>10 Q Just once or more than one occasion?</p> <p>11 A Multiple occasions.</p> <p>12 Q Okay.</p> <p>13 Can you give me examples of</p> <p>14 vessels carrying commercial cargo that you</p> <p>15 captained?</p> <p>16 A Commercial activities, I guess</p> <p>17 pilings or bulkheads, sheet pilings, mooring</p> <p>18 balls, chain, such -- such -- mostly</p> <p>19 construction material.</p> <p>20 Q Okay.</p> <p>21 And who were you employed by at</p> <p>22 that time?</p> <p>23 A One of my best friends owns a company</p> <p>24 called Marine Solutions, and I have worked</p> <p>25 sporadically over the last ten years with him</p>	<p>1 A Yes, 50-ish feet. 50-foot length.</p> <p>2 Q 50-foot length?</p> <p>3 A Yeah.</p> <p>4 Q You would -- you said more than one</p> <p>5 vessel, but you'd say they were all --</p> <p>6 A Smaller push boats and stuff like</p> <p>7 that. I guess vessels ranging from 20 to 50</p> <p>8 feet.</p> <p>9 Q 20 to 50 feet?</p> <p>10 A Mm-hmm.</p> <p>11 Q And are you able similarly to give a</p> <p>12 range of what the draft of the vessels was?</p> <p>13 A Between three and eight feet.</p> <p>14 Q And you mentioned these would have</p> <p>15 been -- so you would have used some of these</p> <p>16 vessels on inland waterways at times --</p> <p>17 A Correct.</p> <p>18 Q -- and international at times?</p> <p>19 A Correct.</p> <p>20 Q Any of those waterways rivers,</p> <p>21 specifically?</p> <p>22 A One of them, yes.</p> <p>23 Q Which river?</p> <p>24 A The Annisquam River.</p> <p>25 Q Can you spell "Annisquam" for the</p>
Page 19	Page 21
<p>1 part-time -- not -- I wouldn't even say a</p> <p>2 part-time basis. As-needed.</p> <p>3 If I have a day off and he needs</p> <p>4 an extra guy type of deal, best friend helping</p> <p>5 out a best friend who owns a business in the</p> <p>6 marine construction field.</p> <p>7 Q Okay.</p> <p>8 A So I would consider that commercial</p> <p>9 cargo.</p> <p>10 Q Okay.</p> <p>11 So these are materials that</p> <p>12 might be used to actually build marine</p> <p>13 structures, nautical structures?</p> <p>14 A Construction, yes, sir.</p> <p>15 Q When you were captaining that vessel,</p> <p>16 do you recall what waterways you would be</p> <p>17 using, or waterway?</p> <p>18 A Inland and international waterways.</p> <p>19 Q Here in Massachusetts or --</p> <p>20 A Mostly in Massachusetts, yes.</p> <p>21 Q Was it one specific vessel or has it</p> <p>22 been more than one?</p> <p>23 A Multiple vessels.</p> <p>24 Q Do you recall the dimensions of the</p> <p>25 vessels in terms of the length and draft?</p>	<p>1 court reporter?</p> <p>2 A A-N-N-I-S-Q-U-A-M.</p> <p>3 Q Was it one specific vessel that</p> <p>4 you've taken on that river or more than one?</p> <p>5 A More than one.</p> <p>6 Q Okay.</p> <p>7 And would you be able to</p> <p>8 estimate the range of lengths of vessels you've</p> <p>9 captained on the Annisquam River?</p> <p>10 A Up to 50 feet.</p> <p>11 Q And what's the low end of the range?</p> <p>12 A 16-foot Zodiac.</p> <p>13 Q So 16 to 50 feet.</p> <p>14 What would be the range of</p> <p>15 drafts of vessels that you've captained on the</p> <p>16 Annisquam River?</p> <p>17 A Up to eight feet.</p> <p>18 Q Okay.</p> <p>19 And what would be the low end of</p> <p>20 that range?</p> <p>21 A 18 inches.</p> <p>22 Q All these vessels were carrying one</p> <p>23 or another of the types of commercial materials</p> <p>24 you mentioned?</p> <p>25 A No. Those are just vessels in</p>

<p style="text-align: right;">Page 22</p> <p>1 general that I've operated on the Annisquam 2 River. The larger vessel, mostly the 50-foot 3 mooring barges, is what we were using for 4 commercial activity. 5 Q Okay. 6 Have you ever used a vessel 7 smaller than a 50-foot mooring barge for 8 commercial activity? 9 A Not carrying any commerce, no. 10 Q All right. 11 So you mentioned not carrying 12 anything. Have you used vessels for commercial 13 activity other than carrying cargo? 14 A No. 15 Q Have you ever been involved in 16 commercial boat tours, for example? 17 A Very briefly, whale watching. Filled 18 in one time for a captain. 19 Q Okay. 20 Was that somewhere in this 21 region as well? 22 A Correct. 23 Q And would you consider that whale 24 watching tour to be a form of commercial 25 activity?</p>	<p style="text-align: right;">Page 24</p> <p>1 What year was that? 2 A 2007. 3 Q Okay. 4 And so at that point, did you 5 have a rank or title? 6 A Yeah, it was right out of boot camp, 7 seaman. 8 Q Okay. 9 And did there come a point when 10 that rank or title changed? 11 A Yes. 12 Q And when was that? 13 A Boatswain's Mate, A School. 14 Q And about when did you become a 15 Boatswain's Mate, A School? 16 A 2008. 17 Q Okay. 18 And how did your -- your duties 19 or your operational obligations change at that 20 point? 21 A You gained a lot more responsibility 22 once you receive your rating. I was stationed 23 in Virginia at the time. Before, I was in 24 North Carolina. And my entire -- the entire 25 unit I was at changed.</p>
<p style="text-align: right;">Page 23</p> <p>1 MS. AL-FUHAID: Objection. 2 Form. 3 A It's for hire, so yes. 4 Q Is there any other commercial 5 navigation, captaining vessels that you have 6 been involved in besides what you've been 7 describing in your testimony the last few 8 minutes? 9 A I don't believe so. 10 Q And you've mentioned you have -- is 11 it 11 years' active duty experience with the US 12 Coast Guard? 13 A Yes, sir. 14 Q Can you describe more what -- what 15 did you -- what were your duties over the 16 course of that active duty period? 17 A Most all of my duties are listed in 18 my CV, but if you'd like me to go over, up to 19 you. There's quite a few in here over the 20 course of my career. 21 Q Sure. 22 When did you first -- you 23 enlisted at some point -- 24 A Correct. 25 Q -- in the Coast Guard?</p>	<p style="text-align: right;">Page 25</p> <p>1 Q And after becoming a Boatswain's Mate 2 A School, what was the next point in time when 3 you had a change in rank or title? 4 A I believe it was when I was stationed 5 on a Coast Guard cutter, coastal patrol, 6 110-foot ship. 7 Q And about when was that? About when 8 did that begin? 9 A Let me look at Exhibit 2, my CV, give 10 you the exact date. 11 (The deponent read the 12 document.) 13 A 2011. 14 Q And from that point, how long were 15 you stationed on that Coast Guard cutter? 16 A Just over two years. 17 Q So what were your operational duties 18 when you were stationed on the Coast Guard 19 cutter? 20 A I was the first lieutenant, so I was 21 the deck boss for the Coast Guard cutter. I 22 was the navigation officer for the Coast Guard 23 cutter. 24 I was a boarding officer. I was 25 a small boat coxswain. I was onboard training</p>

<p style="text-align: right;">Page 26</p> <p>1 team instructor. I was also the chart petty 2 officer. 3 I believe that would cover most 4 of my qualifications onboard. 5 Q When you were the navigation officer, 6 what specifically did you do in that capacity? 7 A You are responsible for maintaining 8 and updating all navigational charts on the 9 vessel and keeping up with current 10 publications, making sure everything's current. 11 Q And generally what waters did that 12 ship patrol, without giving obviously any 13 sensitive information? 14 A Sure. I mean, all -- out to 200 15 nautical miles from North Carolina to Nova 16 Scotia, and interior, Hudson River, bunch of 17 different places, and everything interior 18 pretty much that was navigable for a vessel of 19 that size. 20 Q And do you recall about how long you 21 were -- you functioned as a navigation officer? 22 A The entire time. 23 Q Okay. 24 A I was also a deck watch officer on 25 that boat. I forgot that. Deck watch officer,</p>	<p style="text-align: right;">Page 28</p> <p>1 Q Okay. 2 Can you -- do you recall which 3 rivers? 4 A Hudson River, Potomac River. Trying 5 to think. I'm trying to think of other places. 6 I believe that's it. That's all 7 in the Coast Guard as -- in a Coast Guard 8 capacity. Intracoastal waterways, which I 9 consider rivers, I guess, part and partially, 10 rivers, down in Florida. 11 Q So the Hudson -- 12 A New River, I believe -- 13 Q Sorry. 14 A Sorry. New River. I'm sure I'll 15 think of other ones as the time goes by, but... 16 Q At this moment, those are the ones 17 you can -- 18 A Correct. 19 Q So can you explain what -- what is it 20 specifically that you did to make that 21 determination about the Hudson River? 22 A Well, you look at local charts, 23 navigational equipment, Coast Pilot and other 24 publications, Local Notice to Mariners, regular 25 Notice to Mariners.</p>
<p style="text-align: right;">Page 27</p> <p>1 conning officer, person who drives the ship. 2 Q Have you served as a navigation 3 officer for a Coast Guard vessel at any earlier 4 or later point, or was this the one time you 5 did that? 6 A I was the nav petty officer before -- 7 actually, I've been it at most -- most units 8 I've been at. The one prior to the Coast Guard 9 cutter, I was a nav officer there, and past 10 that, at Coast Guard Station Boston for a brief 11 period of time I was a navigational chart petty 12 officer. 13 Q Did you ever have to make your own 14 discretionary decision as to whether a water 15 that the vessel was considering -- in which it 16 was considering operating was navigable? 17 A Yes. 18 Q Okay. 19 Did you ever do that 20 specifically for a river? 21 A Yes. 22 Q Okay. 23 Which river, or was it more than 24 one? 25 A More than one.</p>	<p style="text-align: right;">Page 29</p> <p>1 You use a variety of those 2 things in completion to determine where you're 3 going and if it's navigable, aids to 4 navigation, so on and so forth. 5 Q When that part -- when you say if 6 it's navigable, could you explain that a bit 7 more? What are you looking at? 8 A Depths of water. The totality of all 9 of that combined, to make sure it's safe or 10 you're able to actually navigate that area and 11 not, per se, run the ship aground or, you know, 12 damage the ship or endanger the crew. 13 Q And after you looked at all that 14 information, was there anyone to whom you had 15 to make a recommendation yes or no? 16 A The captain. 17 Q The captain. 18 And this would be, I assume, 19 prior to commencing on a route or itinerary 20 that might take you through that river? 21 A Correct. 22 Q As part of that process, did you look 23 at whether there was any boat or ship traffic 24 carrying cargo? 25 A You have an AIS system on the boat</p>

<p style="text-align: right;">Page 30</p> <p>1 that shows you commercial vessels, generally</p> <p>2 over 65 feet. And you do a navigation brief as</p> <p>3 well, which when you conduct the nav brief, you</p> <p>4 talk about all those things.</p> <p>5 Q All right.</p> <p>6 Explain the AIS a bit more, if</p> <p>7 you can, please.</p> <p>8 A It's Automatic Identification System</p> <p>9 that's on most commercial vessels over 65 feet</p> <p>10 in length. Doesn't have to be -- people can</p> <p>11 have it under that length, but it -- it pretty</p> <p>12 much shows you the name of the vessel, the</p> <p>13 number assigned to the vessel, can show you</p> <p>14 course and other information, course and speed</p> <p>15 information and other information.</p> <p>16 Q And is that type of information</p> <p>17 important to assess the safety of pursuing a</p> <p>18 route or not?</p> <p>19 A Yes.</p> <p>20 Q Okay.</p> <p>21 And is there any other</p> <p>22 information that the AIS was giving you that</p> <p>23 was necessary to make the determination of</p> <p>24 navigability?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 32</p> <p>1 that and put the totality of all the</p> <p>2 circumstances that pertain to the waterway</p> <p>3 together and make a determination if something</p> <p>4 is navigable or not.</p> <p>5 Q Do you recall going through this</p> <p>6 analysis and determining that a specific river</p> <p>7 was not navigable during your tenure as a</p> <p>8 navigation officer with the Coast Guard?</p> <p>9 A No, I -- we -- I did not.</p> <p>10 Q Okay.</p> <p>11 The cases listed in Exhibit 2</p> <p>12 that had the notation "Expert Witness," are any</p> <p>13 of those cases in which you offered or are</p> <p>14 expecting to offer an opinion on whether a</p> <p>15 river is navigable?</p> <p>16 A A river? No.</p> <p>17 Q Okay.</p> <p>18 Are there any of those cases in</p> <p>19 which you have offered or expect to offer an</p> <p>20 opinion about whether some other type of water</p> <p>21 is navigable?</p> <p>22 A No.</p> <p>23 Q So is this the first case in which</p> <p>24 you've given an expert opinion on that subject?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 31</p> <p>1 Q When -- you mentioned the Potomac</p> <p>2 River. Would the process be the same as what</p> <p>3 you just described for the Hudson River?</p> <p>4 A Yes.</p> <p>5 Q Okay.</p> <p>6 And similarly for the New River</p> <p>7 and the Intracoastal Waterway generally?</p> <p>8 A Mm-hmm, yes.</p> <p>9 Q Do you -- in these processes that</p> <p>10 you've been describing, did it involve any</p> <p>11 aspect of determining whether a water was a</p> <p>12 federal water or not, a water of the United</p> <p>13 States or not?</p> <p>14 A I don't -- no. No.</p> <p>15 Q Do you have -- how would you -- would</p> <p>16 you consider yourself an expert in</p> <p>17 navigability?</p> <p>18 A Yes.</p> <p>19 Q And how would you generally define --</p> <p>20 when you're looking at a river, to you, do you</p> <p>21 have a definition of what makes a river</p> <p>22 navigable?</p> <p>23 A I think you need to look at</p> <p>24 everything that we just spoke about and make</p> <p>25 a -- you know, conduct an analysis of all of</p>	<p style="text-align: right;">Page 33</p> <p>1 Q Just to be clear, I believe -- you</p> <p>2 said this is the first time you've testified in</p> <p>3 deposition as an expert.</p> <p>4 A Correct.</p> <p>5 Q So you -- I'm correct that you've not</p> <p>6 previously testified in court as an expert?</p> <p>7 A Correct.</p> <p>8 Q Have you testified in court in</p> <p>9 another capacity?</p> <p>10 A Yes, as a boarding officer.</p> <p>11 Q Once or more than once?</p> <p>12 A Twice, I believe.</p> <p>13 Q And generally, what --</p> <p>14 A Maybe three times.</p> <p>15 Q Generally, what did those cases</p> <p>16 involve?</p> <p>17 A One was boating under the influence,</p> <p>18 another one was a fisheries case, and another</p> <p>19 one was also a boating under the influence that</p> <p>20 turned into serious injury to a party that was</p> <p>21 onboard.</p> <p>22 Q Have you ever been -- do you have any</p> <p>23 experience personally in your work with</p> <p>24 dredging?</p> <p>25 A Yes.</p>

Page 34	Page 36
<p>1 Q Explain that. What experience do you</p> <p>2 have with dredging?</p> <p>3 A I've been involved in two dredge</p> <p>4 projects, one in Gloucester Harbor and one in</p> <p>5 the Annisquam River, which is also situated in</p> <p>6 Gloucester.</p> <p>7 Q And when was -- roughly when was the</p> <p>8 dredging project in Gloucester Harbor?</p> <p>9 A 2017 or '18.</p> <p>10 Q And what was your connection to that</p> <p>11 project?</p> <p>12 A I was the port director/harbormaster</p> <p>13 for the City of Gloucester, so direct</p> <p>14 involvement.</p> <p>15 Q Okay.</p> <p>16 And in what ways did you get</p> <p>17 involved specifically with the dredging</p> <p>18 project?</p> <p>19 A Support liaison for, you know, the</p> <p>20 Army Corps of Engineers, the Department of</p> <p>21 Environmental Protection, Coastal Zone</p> <p>22 Management.</p> <p>23 It's a total collaboration</p> <p>24 between the state, city and federal government,</p> <p>25 so you're the representative for the -- for the</p>	<p>1 Q Was that contractor supervised by any</p> <p>2 entity?</p> <p>3 A I believe the Army Corps of</p> <p>4 Engineers' representative.</p> <p>5 Q And as far as you know, in that</p> <p>6 instance, was it the responsibility of the Army</p> <p>7 Corps of Engineers to review and approve the</p> <p>8 plan for the dredging?</p> <p>9 A They're one entity that did for sure.</p> <p>10 Q Okay.</p> <p>11 And there were others?</p> <p>12 A Yes.</p> <p>13 Q Okay.</p> <p>14 Who would you say besides US</p> <p>15 Army Corps of Engineers?</p> <p>16 A Department of Environmental</p> <p>17 Protection and Coastal Zone Management.</p> <p>18 Q Okay.</p> <p>19 And that would be Massachusetts</p> <p>20 Department of Environmental Protection?</p> <p>21 A Yes, MassDEP.</p> <p>22 Q And Coastal Zone Management, is that</p> <p>23 also a state agency?</p> <p>24 A It is.</p> <p>25 Q Any others besides those -- that</p>
Page 35	Page 37
<p>1 municipality for the dredge project.</p> <p>2 Q And so it was the Gloucester Harbor</p> <p>3 itself that was being dredged or a portion of</p> <p>4 it?</p> <p>5 A Part of it.</p> <p>6 Q Okay.</p> <p>7 And were you involved in</p> <p>8 designing the plan for the dredging?</p> <p>9 A No.</p> <p>10 Q And did you have to -- was it your</p> <p>11 role to approve that design?</p> <p>12 A I had -- we had -- we have say -- we</p> <p>13 had say as a municipality in -- in the whole</p> <p>14 process but not specifically to the actual</p> <p>15 design.</p> <p>16 Q Okay.</p> <p>17 And were you involved in</p> <p>18 implementing the dredging once the design was</p> <p>19 approved?</p> <p>20 A It was -- this was farmed out to a</p> <p>21 private contractor.</p> <p>22 Q Okay.</p> <p>23 So a private contractor carried</p> <p>24 out that work?</p> <p>25 A For that, yes.</p>	<p>1 federal agency and those state agencies?</p> <p>2 A Local Waterways Board Commission and</p> <p>3 harbormaster and the conser- -- local</p> <p>4 conservation commission gets involved as well.</p> <p>5 Q So you coordinated with others.</p> <p>6 You would not say you personally</p> <p>7 approved the dredge project?</p> <p>8 A Correct.</p> <p>9 Q And then you mentioned a dredging</p> <p>10 project in the Annisquam River also?</p> <p>11 A Yes.</p> <p>12 Q And if I were asking those same</p> <p>13 questions, would there be any different details</p> <p>14 about how that process worked?</p> <p>15 A Yes. We have lots of -- there's lots</p> <p>16 of Coast Guard aids to navigation in that</p> <p>17 river, federal aids to navigation, and there's</p> <p>18 a lot of -- there's private aids to navigation</p> <p>19 in that river.</p> <p>20 There are, I believe, between</p> <p>21 600 and 800 mooring buoys in that river, and</p> <p>22 all of that stuff had to be coordinated through</p> <p>23 me to be removed or relocated.</p> <p>24 And the federal stuff was with</p> <p>25 the Coast Guard to be removed or relocated</p>

<p style="text-align: right;">Page 38</p> <p>1 during the time of dredging. So there was a</p> <p>2 much -- the process was much more</p> <p>3 comprehensive.</p> <p>4 Q You mentioned private aids to</p> <p>5 navigation.</p> <p>6 What are those?</p> <p>7 A There's certain tributaries that come</p> <p>8 off of the Annisquam River that have private</p> <p>9 aids to navigation that are not federal aids to</p> <p>10 navigation, so they are -- either local marinas</p> <p>11 have them to mark an entrance, no-wake -- we</p> <p>12 have no-wake buoys that the city had which</p> <p>13 could be considered an aid to navigation.</p> <p>14 All that stuff has to be removed</p> <p>15 during -- you know, pre-dredge and then put</p> <p>16 back post-dredge.</p> <p>17 Q Okay.</p> <p>18 So a no-wake buoy would be an</p> <p>19 example of a private aid to navigation?</p> <p>20 A (Nods.)</p> <p>21 Q How does it perform its function?</p> <p>22 You know, is there --</p> <p>23 A It gives a mariner information.</p> <p>24 Q Go ahead. Say what you -- what's</p> <p>25 your answer?</p>	<p style="text-align: right;">Page 40</p> <p>1 enters into the larger river?</p> <p>2 A Yes, some of them.</p> <p>3 Q Okay.</p> <p>4 And, like, at what distance</p> <p>5 from -- from that point?</p> <p>6 A I don't understand.</p> <p>7 Q How far would the buoy be, you know,</p> <p>8 let's say in feet or meters from -- from the</p> <p>9 mouth of the tributary?</p> <p>10 A Depends on which tributary.</p> <p>11 Q Was there a range that you recall?</p> <p>12 A Could be between 50 yards or</p> <p>13 sometimes 20 feet from the channel.</p> <p>14 Q And would it be important to place it</p> <p>15 at a certain distance that's going to be</p> <p>16 effective in communicating information to the</p> <p>17 mariners as they pass?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 And so how would you know, for</p> <p>21 example, if you placed that buoy too far away</p> <p>22 from the tributary?</p> <p>23 Like, what would be that point</p> <p>24 where it's no longer effective in communicating</p> <p>25 the information?</p>
<p style="text-align: right;">Page 39</p> <p>1 A Oh. It's gives a mariner information</p> <p>2 and knowledge for the area.</p> <p>3 Q So what is it specifically the</p> <p>4 mariner is looking for?</p> <p>5 Is there something about the way</p> <p>6 that the no-wake buoy is placed or where it's</p> <p>7 placed that conveys information?</p> <p>8 A They're placed sporadically</p> <p>9 throughout the entire waterway.</p> <p>10 Q And then from the mariner's</p> <p>11 perspective, what is it you're interpreting</p> <p>12 when you see them?</p> <p>13 A The speed in which you should</p> <p>14 proceed.</p> <p>15 Q So you mentioned that there are a</p> <p>16 number of tributaries to the Annisquam River,</p> <p>17 for example, right?</p> <p>18 A (Nods.)</p> <p>19 Q Were there no-wake buoys placed in</p> <p>20 the vicinity of any of those tributaries?</p> <p>21 A Some of them.</p> <p>22 Q So to your recollection, like, where</p> <p>23 would the no-wake buoy be placed?</p> <p>24 A At the entrance.</p> <p>25 Q So the mouth of the tributary as it</p>	<p style="text-align: right;">Page 41</p> <p>1 A I guess if you don't see it, then</p> <p>2 it's not effective.</p> <p>3 Q In other words, if you -- you might</p> <p>4 already pass the spot where there's going to be</p> <p>5 a change in conditions and you still haven't</p> <p>6 seen the buoy yet, then it hasn't been placed</p> <p>7 correctly.</p> <p>8 Is that how you would say it?</p> <p>9 A I think every scenario dictates a</p> <p>10 different placement of the buoy, and there's no</p> <p>11 specific answer to that question.</p> <p>12 Q Okay.</p> <p>13 So there's not sort of a</p> <p>14 universal approach that one could adopt and say</p> <p>15 this is how you place no-wake buoys?</p> <p>16 A Correct.</p> <p>17 Q In working on the project and being</p> <p>18 aware of those, coming in after --</p> <p>19 Were you there when the no-wake</p> <p>20 buoys were placed?</p> <p>21 A I personally placed some no-wake</p> <p>22 buoys in the river.</p> <p>23 Q You've personally placed them?</p> <p>24 A Yes.</p> <p>25 Q And some were placed by others?</p>

<p style="text-align: right;">Page 42</p> <p>1 A Yeah.</p> <p>2 Q For those placed by others, would you</p> <p>3 consider yourself able to understand just by</p> <p>4 looking at it, like, I know why they placed it</p> <p>5 in this spot and not another spot 10 meters</p> <p>6 away?</p> <p>7 A No.</p> <p>8 Q Have you ever been involved in</p> <p>9 seeking permits under the Rivers and Harbors</p> <p>10 Act?</p> <p>11 A Yes.</p> <p>12 Q In what capacity?</p> <p>13 A Harbormaster.</p> <p>14 Q Okay.</p> <p>15 Was that something that occurred</p> <p>16 often during the period you were a</p> <p>17 harbormaster?</p> <p>18 A We either -- yes. I was either</p> <p>19 involved in applying or involved in a level of</p> <p>20 review for others that were applying.</p> <p>21 Q And you were harbormaster for --</p> <p>22 during what period?</p> <p>23 A 2016 to '24.</p> <p>24 Q And this is for the Gloucester Harbor</p> <p>25 specifically?</p>	<p style="text-align: right;">Page 44</p> <p>1 ultimately issued from MassDEP --</p> <p>2 Q Okay.</p> <p>3 A -- but there is a Corps license</p> <p>4 attached to it, but the actual overall permit</p> <p>5 is issued through MassDEP.</p> <p>6 Q Okay.</p> <p>7 Were all of those -- were all of</p> <p>8 the applications that you can recall during</p> <p>9 your tenure as harbormaster successful,</p> <p>10 resulted in a permit?</p> <p>11 A Yes.</p> <p>12 Q So none of the applications were</p> <p>13 denied?</p> <p>14 A No. Some -- no.</p> <p>15 Q Did any of them require the</p> <p>16 application to be modified in some way to get</p> <p>17 the permit?</p> <p>18 A That I applied or was involved in</p> <p>19 applying for? No.</p> <p>20 Q That you were involved?</p> <p>21 A No.</p> <p>22 Q Okay.</p> <p>23 And did the permits -- did the</p> <p>24 permits speak to -- were there any permits</p> <p>25 that -- in which there was sort of a USACE</p>
<p style="text-align: right;">Page 43</p> <p>1 A Yes, sir.</p> <p>2 Q And how do you spell Gloucester? For</p> <p>3 you -- you may know.</p> <p>4 THE REPORTER: I live here.</p> <p>5 MR. LYNK: That's what I</p> <p>6 figured.</p> <p>7 (Laughter.)</p> <p>8 BY MR. LYNK:</p> <p>9 Q So -- so can you give me an example</p> <p>10 of what would be the type of thing that, you</p> <p>11 know, during this tenure you sometimes had</p> <p>12 to -- were involved in getting a Rivers and</p> <p>13 Harbors Act Section 10 permit for?</p> <p>14 A Piers, docks, gangways, permanent</p> <p>15 pile placement, commercial marina, bulkheads</p> <p>16 replacement and seawall replacement. Stuff</p> <p>17 like that.</p> <p>18 Q Okay.</p> <p>19 So these would have been</p> <p>20 permits -- applications to the US Army Corps of</p> <p>21 Engineers for permits?</p> <p>22 A In Massachusetts, they go to the</p> <p>23 Department of Environmental Protection first</p> <p>24 and then they send them to the Corps and the</p> <p>25 Corps sends them back, and the license is</p>	<p style="text-align: right;">Page 45</p> <p>1 determination as to what type of covered thing</p> <p>2 this was under the statute or their</p> <p>3 regulations?</p> <p>4 A I'm sure there was.</p> <p>5 Q Okay.</p> <p>6 Do you recall any specifics</p> <p>7 about that?</p> <p>8 A I do not.</p> <p>9 Q Do you recall any instances in which</p> <p>10 it was specifically determined that the thing</p> <p>11 that you sought a permit for would be</p> <p>12 considered an other structure?</p> <p>13 A No.</p> <p>14 Q Have you ever personally been</p> <p>15 involved in an analysis of whether -- prior to</p> <p>16 this case whether some sort of nautical thing</p> <p>17 would be an other structure under the</p> <p>18 statutory --</p> <p>19 A No.</p> <p>20 Q Okay.</p> <p>21 Were any of those permit</p> <p>22 applications specifically for buoys?</p> <p>23 A No.</p> <p>24 Q No individual buoys and no attached</p> <p>25 buoys either?</p>

<p style="text-align: right;">Page 46</p> <p>1 A No.</p> <p>2 Q Okay.</p> <p>3 Outside of your tenure as the</p> <p>4 Gloucester Harbormaster, have you at any other</p> <p>5 point been involved in seeking a permission</p> <p>6 from the state or federal government for a</p> <p>7 buoy?</p> <p>8 A No.</p> <p>9 Q Okay.</p> <p>10 Or attached buoys?</p> <p>11 A No.</p> <p>12 Q And in terms of when you got the</p> <p>13 permit applications you did mention, did you</p> <p>14 write those applications?</p> <p>15 A Some of them, or assisted in writing.</p> <p>16 We usually have a consultant as well that we</p> <p>17 work in tandem with.</p> <p>18 MR. LYNK: Why don't we take a</p> <p>19 little bit of a break. It's about ten after</p> <p>20 10:00.</p> <p>21 (Recess.)</p> <p>22 BY MR. LYNK:</p> <p>23 Q You mentioned earlier you've not been</p> <p>24 involved in determining if a waterway was a</p> <p>25 federal water of the United States, correct,</p>	<p style="text-align: right;">Page 48</p> <p>1 the process. It's more of an awareness thing</p> <p>2 of knowing where you are geographically.</p> <p>3 Q Okay.</p> <p>4 Would it be fair to say it's</p> <p>5 received information as opposed to you</p> <p>6 determining on your own whether it's true or</p> <p>7 not?</p> <p>8 A Yes. Or learned information.</p> <p>9 Q Okay.</p> <p>10 But you were not doing your own</p> <p>11 independent evaluation to decide if there was a</p> <p>12 federal water --</p> <p>13 A No.</p> <p>14 Q Okay.</p> <p>15 And that would -- that would</p> <p>16 hold -- that would be the same for each of</p> <p>17 those four examples?</p> <p>18 A Correct.</p> <p>19 Q And that's not something you've done</p> <p>20 for the Gloucester Harbor or the Annisquam</p> <p>21 River?</p> <p>22 A I know my -- the area in which I was</p> <p>23 responsible, and I know what waters are</p> <p>24 federally regulated and which are not.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 47</p> <p>1 prior to this case?</p> <p>2 A Determine -- like making -- I'm a</p> <p>3 little confused on the question.</p> <p>4 Q Sure.</p> <p>5 So, for example, you mentioned</p> <p>6 that when you -- as a navigation officer, you</p> <p>7 described a process of determining if a</p> <p>8 waterway was navigable before commencing</p> <p>9 through it.</p> <p>10 A Correct.</p> <p>11 Q And you mentioned at least four that</p> <p>12 you could recall: Hudson River, Potomac, New</p> <p>13 River and Intracoastal Waterways, right?</p> <p>14 A (Nods.)</p> <p>15 Q So I think I'm correct that it wasn't</p> <p>16 a part of your process in those instances to</p> <p>17 determine is this a federally regulated</p> <p>18 waterway, you know, water of the United States?</p> <p>19 It was not part of your process;</p> <p>20 is that right?</p> <p>21 A I'm always -- well, you're always</p> <p>22 aware of where you are, and you consciously</p> <p>23 know if you're, you know, in state waters,</p> <p>24 federal waters, international waters.</p> <p>25 But it's not a specific part of</p>	<p style="text-align: right;">Page 49</p> <p>1 So there -- so what things were</p> <p>2 you determining as opposed to having an</p> <p>3 awareness already when you did -- when you went</p> <p>4 through the process you described earlier for</p> <p>5 the four types of waterways or four examples of</p> <p>6 waterways in your Coast Guard tenure?</p> <p>7 A Can you repeat the first part of that</p> <p>8 question?</p> <p>9 Q You testified you were aware of the</p> <p>10 status of the waterway.</p> <p>11 A (Nods.)</p> <p>12 Q So you, as the navigation officer,</p> <p>13 and looking at the various sources of</p> <p>14 information you've talked about, making your</p> <p>15 recommendation to the captain, in that moment</p> <p>16 then what were you making a determination</p> <p>17 about?</p> <p>18 A If it's safe to navigate.</p> <p>19 Q Okay.</p> <p>20 And -- and so that -- would it</p> <p>21 be fair to say that that could be a different</p> <p>22 question than is a water a federal water or a</p> <p>23 state water?</p> <p>24 A That could -- yes.</p> <p>25 Q And you mentioned -- you testified</p>

<p style="text-align: right;">Page 50</p> <p>1 earlier about the Annisquam River.</p> <p>2 What was the purpose -- you</p> <p>3 recall -- you testified as well there was a</p> <p>4 dredging project in the Annisquam, right,</p> <p>5 during your tenure as the Gloucester</p> <p>6 harbormaster?</p> <p>7 A Right.</p> <p>8 Q Do you recall what was the goal of</p> <p>9 that dredging project in that river?</p> <p>10 A To restore the depth of the river at</p> <p>11 mean low water.</p> <p>12 Q Okay.</p> <p>13 Can you explain "mean low water"</p> <p>14 to us non-nautical people?</p> <p>15 (Laughter.)</p> <p>16 A In Massachusetts, Gloucester</p> <p>17 specifically, we have roughly a 10-foot tidal</p> <p>18 range, high tide, low tide. Mean low water is</p> <p>19 the average of the low tides.</p> <p>20 So they wanted to restore the</p> <p>21 depth of the river back to its authorized</p> <p>22 depth.</p> <p>23 Q And what was the authorized depth?</p> <p>24 A Eight feet.</p> <p>25 Q And prior to implementing the</p>	<p style="text-align: right;">Page 52</p> <p>1 there, because it was already deeper than the</p> <p>2 authorized depth which they were trying to</p> <p>3 restore.</p> <p>4 Q Understood.</p> <p>5 So -- so parts of that -- of</p> <p>6 that river were at the authorized depth or</p> <p>7 could have been a little more, but parts were</p> <p>8 less, and the goal of the project was to make</p> <p>9 the river consistently at least at the</p> <p>10 authorized depth?</p> <p>11 A Correct.</p> <p>12 Q Was the project successful, to your</p> <p>13 knowledge?</p> <p>14 A Yes, it was.</p> <p>15 Q So they were able to meet the goal of</p> <p>16 restoring the river to the authorized depth?</p> <p>17 A Correct.</p> <p>18 Q And prior to the project, what was</p> <p>19 your recollection about what types of vessels</p> <p>20 typically would use that waterway?</p> <p>21 A Recreational vessels and</p> <p>22 commercial -- some commercial vessels. Mostly</p> <p>23 recreational. Not a lot of commercial before</p> <p>24 the dredging because of the depth of the water,</p> <p>25 unless it was high tide, because then you have</p>
<p style="text-align: right;">Page 51</p> <p>1 project, what was the actual depth?</p> <p>2 A It varied.</p> <p>3 Q Okay.</p> <p>4 Are you able to give a range of</p> <p>5 what it was at the time?</p> <p>6 A It's 3 nautical miles, roughly 3.3</p> <p>7 nautical miles, the Annisquam River. And the</p> <p>8 depths varied from, at mean low water from --</p> <p>9 believe it or not, down to a foot and a half</p> <p>10 to, like, four to five feet, and then there was</p> <p>11 obviously areas that were over eight feet or,</p> <p>12 you know, some as deep as 20 feet, just for the</p> <p>13 natural flow of the -- of the river.</p> <p>14 Q Okay.</p> <p>15 So then if they -- to --</p> <p>16 restoring the depth to its authorized depth of</p> <p>17 eight means that it would be at least eight</p> <p>18 throughout --</p> <p>19 A A minimum of eight after,</p> <p>20 post-dredge.</p> <p>21 Q Okay.</p> <p>22 A minimum of eight feet and then</p> <p>23 some places could then be deeper?</p> <p>24 A Correct. And they -- if it was</p> <p>25 already over eight feet, they wouldn't dredge</p>	<p style="text-align: right;">Page 53</p> <p>1 an extra, you know, ten feet of water.</p> <p>2 Q And did the -- did the types of</p> <p>3 vessel traffic change after the implementation</p> <p>4 of the dredging project?</p> <p>5 A Yes, it did.</p> <p>6 Q And how did it change?</p> <p>7 A There was much more commercial</p> <p>8 activity post-dredge.</p> <p>9 Q Can you give examples of the</p> <p>10 commercial activity, to the extent you know.</p> <p>11 A Small barges and push boats,</p> <p>12 commercial fishing trawlers, marine</p> <p>13 construction activity, stuff like that.</p> <p>14 Q What would be the -- you said small</p> <p>15 barges.</p> <p>16 Are you able to give, like,</p> <p>17 typical dimensions in terms of length and</p> <p>18 depth -- I mean draft, excuse me, for small</p> <p>19 barges?</p> <p>20 A It varies vessel to vessel, barge to</p> <p>21 barge. Depends on what the load is. There's</p> <p>22 so many variables, it's hard to give an</p> <p>23 estimate.</p> <p>24 Q In general, you would say -- would</p> <p>25 you say that the Annisquam River was a river</p>

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<p>1 that -- where commercial navigation was 2 occurring prior to the dredge project? 3 A Limited basis because of the draft, 4 or the depth of the river. 5 Q And then would you say that after the 6 implementation of the dredge project, that 7 there's been commercial navigation occurring in 8 the Annisquam? 9 A There's been more, yes. 10 Q There's been more? 11 Would you say the Annisquam 12 River is a highway of commerce? 13 MS. AL-FUHAID: Objection. 14 Form. 15 A I would say there's commercial 16 activity there. I don't know if I would call 17 it a "highway of commerce." 18 I don't believe the Army Corps 19 of Engineers considers commercial fishing 20 commerce, so no. 21 Q And what is your basis for that 22 statement? 23 A It was not -- commercial fishing was 24 not considered commerce when we were trying to 25 get the Army Corps to fund the project. They</p>	<p>1 to support commerce, then that's where I would 2 draw the line. Or if there's not reasonable, 3 you know, depths of water; the area is not 4 navigable; there's no shoreside facilities; 5 there's no support infrastructure; there's no 6 shipyards or repair facilities or fuel or -- 7 so... 8 Q So some of what you just described 9 has to do with actual physical conditions of 10 the waterway itself, and then some of what you 11 described has to do with whether the 12 infrastructure to support navigation is in 13 place, correct? 14 A For commerce. 15 Q Right. 16 A Correct. 17 Q But just to be clear, like, not all 18 of those factors you described are actual 19 characteristics of the river? 20 A Correct. 21 Q Okay. 22 Do you consider yourself to have 23 legal expertise? 24 A Yes, some. 25 Q Okay.</p>
Page 55	Page 57
<p>1 did not consider commercial fishing as 2 commerce. 3 I don't -- that's -- that's 4 their -- that's their rules, not mine. 5 Q Okay. 6 Is "highway of commerce" a term 7 that you personally have a definition for, or 8 does it personally have a meaning to you? 9 A It has a meaning, yes. 10 Q What is it? 11 A I would consider Boston Harbor a 12 highway of commerce. There's a big Conley 13 Terminal here. There's a big -- it's a 14 decent-size port. There's a lot of commercial 15 tankers and barges and goods that are offloaded 16 and onloaded, imported and exported out of 17 here. 18 I would consider that a highway 19 of commerce. 20 Q Are you able to define a threshold 21 where that term begins to be descriptive of a 22 waterway? 23 MS. AL-FUHAID: Objection. 24 Form. 25 A I guess if there's no infrastructure</p>	<p>1 What types of law would you 2 consider yourself to be an expert in? 3 A Maritime law, Chapter 90B, Mass. 4 General Laws, boating laws, maritime navigation 5 laws, stuff like that. 6 Q Okay. 7 Would you -- 8 A Federal laws, maritime federal laws. 9 Q Would you consider yourself a legal 10 expert in interpretation of the Rivers and 11 Harbors Act? 12 A No. 13 Q Are you offering any -- in your 14 report any legal interpretations of the Rivers 15 and Harbors Act? 16 A I believe I do, yes. 17 Q Are you offering those as opinions to 18 be considered or just as background information 19 about the case? 20 A Background information and 21 definitionwise, or certain definitions, 22 quotations from the Rivers and Harbors Act, and 23 as background information. 24 Q Did you -- did you do that research 25 yourself or did you -- or was that something</p>

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<p>1 that you had to rely on others --</p> <p>2 A I didn't rely on anybody, but I -- it</p> <p>3 was a combination of research that was provided</p> <p>4 and research that I did on my own.</p> <p>5 Q Are there any assumptions you were</p> <p>6 asked to make by Texas that you then agreed to</p> <p>7 make and incorporate into your opinion?</p> <p>8 A I was given some definitions in which</p> <p>9 I did not rely on. Due to my experience,</p> <p>10 education and training, I came to my own</p> <p>11 conclusions.</p> <p>12 Q Okay.</p> <p>13 So there's no -- so your report</p> <p>14 does not include any definitions that you just</p> <p>15 accepted and relied on from someone else.</p> <p>16 If -- anything in there is something that you</p> <p>17 had independently determined?</p> <p>18 A There are, I believe, two definitions</p> <p>19 in here which were given to me by the State of</p> <p>20 Texas, but I did not solely rely on them to</p> <p>21 make my determinations.</p> <p>22 Q Okay.</p> <p>23 Which two were those?</p> <p>24 A I'd have to look. I believe there</p> <p>25 may actually be one...</p>	<p>1 A Yes, sir.</p> <p>2 Q And from there, how far down?</p> <p>3 A Just that first paragraph.</p> <p>4 Q Okay.</p> <p>5 So that first paragraph of, I</p> <p>6 think, seven lines?</p> <p>7 A Correct.</p> <p>8 Q Six lines. I can't count. Sorry.</p> <p>9 (Laughter.)</p> <p>10 A Yeah. Six. Six.</p> <p>11 Q Thank you.</p> <p>12 Do you consider yourself to be</p> <p>13 an expert in economics?</p> <p>14 A No.</p> <p>15 Q So are you -- so, for example, you</p> <p>16 testified earlier that some of the factors that</p> <p>17 would go into whether a waterway is a highway</p> <p>18 of commerce would be the conditions physically</p> <p>19 of the waterway and some would be the</p> <p>20 infrastructure, right?</p> <p>21 A Correct.</p> <p>22 Q I take it you're not offering</p> <p>23 opinions in this case about -- from an</p> <p>24 economist's point of view about, you know,</p> <p>25 whether the cost and benefits would justify</p>
Page 59	Page 61
<p>1 (The deponent read the</p> <p>2 document.)</p> <p>3 A Oh, no, it's two -- navigable</p> <p>4 waters --</p> <p>5 Q Can you mention for the court</p> <p>6 reporter what page?</p> <p>7 A Oh, sorry, page 9 of Exhibit 1,</p> <p>8 navigable waters. And I believe the term</p> <p>9 "buoy" on page 18 of Exhibit 1. I believe</p> <p>10 that's it, unless I'm overlooking something.</p> <p>11 Q And so the one -- so on page 9,</p> <p>12 navigable waters, that would be beginning from</p> <p>13 the sixth line down on that page?</p> <p>14 A Just let me make sure... yeah, I</p> <p>15 believe so.</p> <p>16 Q So would I understand that correctly</p> <p>17 to be the portion from that line through the</p> <p>18 end of that page?</p> <p>19 A Correct.</p> <p>20 Q Okay. That's the navigable waters</p> <p>21 definition you referred to.</p> <p>22 And then on page 18, buoys.</p> <p>23 Would I understand correctly that you're</p> <p>24 referring to the beginning of the first line of</p> <p>25 text on that page?</p>	<p>1 creating the infrastructure in the Rio Grande</p> <p>2 that might give rise to greater river-borne</p> <p>3 commerce?</p> <p>4 A Not specifically, but I do know that</p> <p>5 part of the Army Corps's process in improving</p> <p>6 infrastructure, such as dredging, is to do a</p> <p>7 cost-benefit analysis.</p> <p>8 Q And is that an understanding you</p> <p>9 gained from your involvement in applications to</p> <p>10 the USACE?</p> <p>11 A Yes. And being involved in</p> <p>12 implementing a dredging plan and project that</p> <p>13 we -- I presented along with others to the</p> <p>14 Corps.</p> <p>15 The dredging of the Annisquam</p> <p>16 River was a multiyear convincing, if you will,</p> <p>17 of getting federal funding, because it's</p> <p>18 considered a shallow-draft navigation project.</p> <p>19 So there's a cost-benefit</p> <p>20 analysis piece that was particularly tough for</p> <p>21 us to prove, because the commerce that</p> <p>22 typically uses that area is not considered</p> <p>23 commerce by the Army Corps's definition, which</p> <p>24 is commercial fishing.</p> <p>25 It's a commercial fishing port.</p>

<p style="text-align: right;">Page 62</p> <p>1 So I'm pretty familiar with that process. Very</p> <p>2 familiar.</p> <p>3 Q And so you're saying in that -- in</p> <p>4 that project, the commercial fishing was not</p> <p>5 considered as a commerce?</p> <p>6 A Correct.</p> <p>7 Q How were you able to surmount that?</p> <p>8 A The lack of navigability at tides --</p> <p>9 certain tides created a public safety -- a</p> <p>10 threat to public safety and to first</p> <p>11 responders. So that's how we were ultimately</p> <p>12 able to surmount that, was Gloucester's an</p> <p>13 island. It's separated by the Annisquam River.</p> <p>14 So if you had an emergency, let's say, on the</p> <p>15 north side, you would have to travel 17 miles</p> <p>16 out and around to get to that emergency. Coast</p> <p>17 Guard rescue boats, harbormaster, local police,</p> <p>18 at certain tides, because it was so shallow,</p> <p>19 were unable to navigate the river, thus</p> <p>20 increasing, you know, response time</p> <p>21 exponentially.</p> <p>22 So that's the case that we ended</p> <p>23 up making and ultimately getting funding.</p> <p>24 Q Okay.</p> <p>25 And that ultimately led to the</p>	<p style="text-align: right;">Page 64</p> <p>1 prior to working on this case?</p> <p>2 A I had been to the southern portion</p> <p>3 near South Padre Island a long time ago, that</p> <p>4 area. I don't remember the specific area we</p> <p>5 were in.</p> <p>6 We were on boats traversing the</p> <p>7 Gulf area, but southern portion.</p> <p>8 Q Okay.</p> <p>9 You hadn't been further upriver</p> <p>10 on the Rio Grande --</p> <p>11 A No, sir.</p> <p>12 Q -- prior to this case?</p> <p>13 A No, sir.</p> <p>14 Q And since being involved with this</p> <p>15 case, you have visited the Rio Grande in the</p> <p>16 vicinity of where the floating barrier is</p> <p>17 located; is that right?</p> <p>18 A Yes, sir.</p> <p>19 Q And if I refer to "floating barrier,"</p> <p>20 will you understand that to be the connected</p> <p>21 objects -- buoys, as they're referred to --</p> <p>22 that have been placed in the river and became</p> <p>23 the subject of a lawsuit?</p> <p>24 A I would.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 63</p> <p>1 approval of the dredging project?</p> <p>2 A Correct.</p> <p>3 Q Was a cost-benefit analysis required</p> <p>4 as part of the project?</p> <p>5 A I believe a cost-benefit analysis is</p> <p>6 required of any Army Corps dredge project.</p> <p>7 Q Do you know if a cost-benefit</p> <p>8 analysis was done in this instance?</p> <p>9 A I believe it was.</p> <p>10 Q By whom?</p> <p>11 A By the Army Corps.</p> <p>12 Q Okay.</p> <p>13 Did you recall seeing it at some</p> <p>14 point?</p> <p>15 A I believe I did at some point.</p> <p>16 Q Do you remember any details of it?</p> <p>17 A I do not.</p> <p>18 Q But in any event, those public safety</p> <p>19 issues, emergency response considerations</p> <p>20 enabled the USACE in that instance to approve</p> <p>21 this dredging project even though they had</p> <p>22 indicated that the commercial fishing was not</p> <p>23 considered commerce?</p> <p>24 A Yes.</p> <p>25 Q Had you ever visited the Rio Grande</p>	<p style="text-align: right;">Page 65</p> <p>1 And have you visited that area</p> <p>2 just one occasion or more than one?</p> <p>3 A Just once.</p> <p>4 Q Okay.</p> <p>5 Was that June 7th of this year?</p> <p>6 A Yes, sir.</p> <p>7 Q Okay.</p> <p>8 And with whom did you take the</p> <p>9 tour that day on June 7th of that area?</p> <p>10 A DPS, Department of Public Safety,</p> <p>11 Texas. I believe their state police.</p> <p>12 Q Did any Texas counsel attend with</p> <p>13 you?</p> <p>14 A No.</p> <p>15 Q Do you know if any other consultants</p> <p>16 to Texas in the case attended with you besides</p> <p>17 yourself?</p> <p>18 A Just me.</p> <p>19 Q Can you describe what things -- what</p> <p>20 parts of the area did you get to see that day?</p> <p>21 A I believe it's called Shelby Park, is</p> <p>22 where I met the state police officers. Walked</p> <p>23 around that area in the park and then proceeded</p> <p>24 roughly two to two-and-a-half miles southbound</p> <p>25 on the Rio Grande River until we got to the</p>

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<p>1 buoy barrier.</p> <p>2 Q And about how much time did you</p> <p>3 spend, you know, within sight of the buoy</p> <p>4 barrier?</p> <p>5 A Maybe an hour to an hour and a half,</p> <p>6 maybe, roughly.</p> <p>7 Q And that day as you were headed there</p> <p>8 to observe it, were there particular things</p> <p>9 that you intended to try to observe about, any</p> <p>10 particular details that were going to be</p> <p>11 important for you?</p> <p>12 A The placement, how it was placed, how</p> <p>13 it was constructed. I had a good</p> <p>14 understanding, because from my report, on</p> <p>15 page 18, you can see the buoys on land.</p> <p>16 So I had kind of a good</p> <p>17 understanding on what they were and how they</p> <p>18 worked before I had gotten there. Observed the</p> <p>19 depth of water, stuff like that.</p> <p>20 Q And what did you -- once you got</p> <p>21 there, what did you observe about the depth of</p> <p>22 the water? What was its depth at that time?</p> <p>23 A It varied, but certain parts of the</p> <p>24 river seemed to be three to four feet deep; and</p> <p>25 some parts of the river, there was no water at</p>	<p>1 types of boats, and one of the gentlemen</p> <p>2 indicated that --</p> <p>3 Actually, we saw a small little</p> <p>4 border patrol boat up by the park that was</p> <p>5 maybe 14 feet in length. I think that was</p> <p>6 pretty much the extent of the conversation</p> <p>7 about that.</p> <p>8 Q And did you seek any information from</p> <p>9 DPS that day about what they'd observed in</p> <p>10 terms of depth of the water on other dates, you</p> <p>11 know, besides the one day you were visiting?</p> <p>12 A I did.</p> <p>13 Q And what did they tell you?</p> <p>14 A I asked if the river was high or low</p> <p>15 or what -- the average -- is this the average</p> <p>16 depth.</p> <p>17 I also asked about their</p> <p>18 experience with releases from the dam and if</p> <p>19 they had -- the way the Border Patrol and Texas</p> <p>20 DPS situated their boats on the river, they</p> <p>21 just kind of bow them up on the banking. I was</p> <p>22 wondering if there was a dam -- a controlled</p> <p>23 release, if they would know ahead of time so</p> <p>24 their boat, you know, so the boats didn't wash</p> <p>25 away.</p>
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<p>1 all.</p> <p>2 Q And when you say "parts of the</p> <p>3 river," are you able to define, like, how long</p> <p>4 was the stretch of river that you surveyed on</p> <p>5 that site visit?</p> <p>6 A Two to three nautical miles in total.</p> <p>7 Q Part of that distance upriver from</p> <p>8 the buoy barrier and part downriver, or was it</p> <p>9 all upriver?</p> <p>10 A That's correct, part up and down.</p> <p>11 Q Okay.</p> <p>12 And what -- what type of vessel</p> <p>13 were you -- I assume you were in a waterborne</p> <p>14 vessel for this visit?</p> <p>15 A Correct.</p> <p>16 Q And what type of vessel was it?</p> <p>17 A Airboat or a fan boat.</p> <p>18 Q Were there any other accompanying</p> <p>19 vessels in the group or just that one?</p> <p>20 A There was not.</p> <p>21 Q Did you seek any information from the</p> <p>22 DPS about, you know, their use of vessels in</p> <p>23 the river, other than on that day?</p> <p>24 A I don't believe so. I may have</p> <p>25 asked -- I believe I did ask if they use other</p>	<p>1 And they said that they're</p> <p>2 supposed to know, but they rarely do know if</p> <p>3 there's going to be a release. And then what</p> <p>4 that kind of looks like, how high the water can</p> <p>5 get or low it can get.</p> <p>6 Q What did they say in terms of how</p> <p>7 high and how low the water can get?</p> <p>8 A They said it can vary a couple of</p> <p>9 feet in certain areas. Other areas still</p> <p>10 remained dry depending on the topography of the</p> <p>11 river, high spots or low spots.</p> <p>12 They said it really just kind of</p> <p>13 all depends on where you're at specifically in</p> <p>14 the river.</p> <p>15 Q Did you ask them about if there's any</p> <p>16 sort of typical seasonal variation in the water</p> <p>17 depth?</p> <p>18 A I did not bring up seasonal</p> <p>19 variation, no.</p> <p>20 Q And you mentioned seeing a 14-foot</p> <p>21 Border Patrol boat out that day.</p> <p>22 Did you see any other boats on</p> <p>23 that stretch of the river that day?</p> <p>24 A No.</p> <p>25 Q Earlier I asked you about the other</p>

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<p>1 cases in your list where you're involved as an 2 expert. 3 I think I had asked this, but do 4 any of those cases involve a river 5 specifically, that type of waterway? 6 A No. 7 Q You mentioned that there were just 8 two definitions given for Texas, you've already 9 explained where those were, on page 9 and 18. 10 I just want to make sure, there 11 is a paragraph on page 32, the second paragraph 12 there when you get to that page. 13 Do you see the sentence that 14 begins, "Finally, the buoys are not other 15 structures" -- 16 A That was also provided, and I had 17 previously misspoken. This was also provided. 18 I forgot that this was down towards the bottom 19 of the report. 20 Q Okay. Got it. 21 A So -- 22 Q Okay. 23 So in terms of definitions given 24 to you by Texas -- 25 A Mm-hmm.</p>	<p>1 Q So it mentions associate of applied 2 science, fire science, at North Shore Community 3 College. 4 A Correct. 5 Q And can you explain what you studied? 6 A It's chem fire and hazmat, and it's 7 exactly that. It's fire science, the science 8 of hazardous materials and combustion and fire. 9 Q Okay. 10 And then -- and then after that, 11 you acquired a bachelor of science from 12 Endicott College, correct? 13 A Yes. 14 Q And it refers to homeland security, 15 criminal justice. 16 Is that specifically -- was 17 there a specific major -- like, is it bachelor 18 of science in -- 19 A Criminal justice concentrated in 20 Homeland Security studies. 21 Q Okay. Understood. 22 So the -- so the degree is 23 criminal justice but within that you had a 24 concentration in homeland security? 25 A Correct.</p>
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<p>1 Q -- it would be the ones you testified 2 about on page 9 and 18 -- 3 A Correct. 4 Q -- and this paragraph on page 32? 5 A Yes, sir. 6 Q From -- and it's about, I'll say, a 7 ten-line paragraph beginning, "Finally, the 8 buoys are not other structures"? 9 A Correct. 10 Q Okay. 11 And that is the only portion of 12 your report that discusses that topic, correct? 13 A I believe so. 14 Q I just want to ask you something 15 about your -- this is -- 16 I'm looking at Exhibit 2, 17 page 39 of 42, and there's a section on your 18 education and training. 19 A Which page was that again, sir? 20 Q Page 39 -- 21 A Yeah. 22 Q -- of 42 in Exhibit 2. 23 A Yes. 24 (The deponent read the 25 document.)</p>	<p>1 Q And what -- what -- what was the 2 content of that? Like what sorts of courses 3 did you take? 4 A Introduction to terrorism to national 5 security to lots of intelligence courses. 6 There was -- I took an international borders 7 course, I believe, investigation into 8 terrorism. 9 I can't remember. It was a lot 10 of -- a lot of courses like that, 11 international -- international disputes, 12 history of international disputes, stuff like 13 that. 14 Q And have you done any -- have you 15 done any graduate education since acquiring the 16 bachelor's? 17 A I have not. 18 Q And since then in your career have 19 you -- have you made use of your training or 20 your education in criminal justice? 21 A I believe it's definitely helped. 22 Q Okay. 23 In what ways? 24 A Well, being a boarding officer in the 25 United States Coast Guard and having a degree</p>

<p style="text-align: right;">Page 74</p> <p>1 in criminal justice and understanding how, you</p> <p>2 know, our judicial and legal system works, I</p> <p>3 think it goes hand-in-hand, gives you an</p> <p>4 overall, much broader aspect of how things</p> <p>5 work.</p> <p>6 Q Would you say that it had an</p> <p>7 applicability in your work as the harbormaster</p> <p>8 for Gloucester Harbor or not?</p> <p>9 A Yes, it was applicable.</p> <p>10 Q Okay.</p> <p>11 In what way?</p> <p>12 A As the harbormaster, you are --</p> <p>13 your -- the entire department is enacted to</p> <p>14 enforce Mass. General Law Chapter 90B, which is</p> <p>15 all the boating laws and regulations for the</p> <p>16 Commonwealth.</p> <p>17 So you quasi do law enforcement,</p> <p>18 so a criminal justice degree is relevant.</p> <p>19 Q Was there any point in the period you</p> <p>20 mentioned you were the harbormaster that any</p> <p>21 nautical structures were deployed specifically,</p> <p>22 you know, to prevent illegal activity of some</p> <p>23 sort?</p> <p>24 A We deployed buoys to deter certain</p> <p>25 activity, but no structures for specific</p>	<p style="text-align: right;">Page 76</p> <p>1 foul your propeller or propulsion system, but I</p> <p>2 guess it is physically possible to maybe get</p> <p>3 through there.</p> <p>4 Q Okay.</p> <p>5 And so when you say "deter,"</p> <p>6 does that always mean "deter" in the sense you</p> <p>7 just described, like something that would</p> <p>8 sufficiently be a barrier such that it would</p> <p>9 actually be damaging if one tried to take a</p> <p>10 vessel past --</p> <p>11 A It could.</p> <p>12 Q Okay.</p> <p>13 And the buoy barrier in the</p> <p>14 Rio Grande, would you say that description</p> <p>15 would apply to that as well?</p> <p>16 A Yes.</p> <p>17 Q All right.</p> <p>18 It would be potentially damaging</p> <p>19 if someone tried to take a vessel across the</p> <p>20 stretch of the river in which the buoy barrier</p> <p>21 is placed?</p> <p>22 MS. AL-FUHAID: Objection.</p> <p>23 Vague -- form.</p> <p>24 A Like running over the barrier with</p> <p>25 something?</p>
<p style="text-align: right;">Page 75</p> <p>1 targeted illegal activity.</p> <p>2 Q Okay.</p> <p>3 How did you use buoys to deter</p> <p>4 activity?</p> <p>5 A Marine events. We have lots of</p> <p>6 permitted marine event permits, such as, you</p> <p>7 know, festivals and fireworks and so on and so</p> <p>8 forth, so we'll use buoys to keep certain</p> <p>9 people out of certain areas.</p> <p>10 Or a lot of our beaches coincide</p> <p>11 with boating areas, so we'll use sequential</p> <p>12 buoys to mark off certain areas where boats are</p> <p>13 not allowed, or to deter people from going in</p> <p>14 there completely.</p> <p>15 There's also some swim races</p> <p>16 that we'll use buoys to mark off areas to deter</p> <p>17 people from going in there.</p> <p>18 Q And when you say "deter," is it --</p> <p>19 for example, the swim race example, I assume --</p> <p>20 is it -- it's physically possible to go between</p> <p>21 such buoys if one really wants to?</p> <p>22 A I suppose it's -- I suppose you</p> <p>23 could. Certain aspects, some buoys we</p> <p>24 interlace together, so you would -- if you were</p> <p>25 in a prop boat, you would damage your prop or</p>	<p style="text-align: right;">Page 77</p> <p>1 Q I'll ask that, yeah.</p> <p>2 If someone were to want to cross</p> <p>3 from bank to bank in the stretch where the</p> <p>4 barrier was placed, would it likely damage</p> <p>5 their vessel?</p> <p>6 A Yes.</p> <p>7 Q And is the buoy barrier -- did you</p> <p>8 get a sense during your site visit about</p> <p>9 roughly how close to the US bank the barrier is</p> <p>10 relative to how far from the opposite bank it</p> <p>11 is placed?</p> <p>12 A I did.</p> <p>13 Q Is it closer to one than the other?</p> <p>14 A It is.</p> <p>15 Q Which one?</p> <p>16 A The United States'.</p> <p>17 Q Okay.</p> <p>18 If you were estimating the</p> <p>19 breadth of the river in that stretch, how much</p> <p>20 of it is on the US side versus how much is</p> <p>21 opposite?</p> <p>22 What would you say? Like, what</p> <p>23 fraction is on the US side?</p> <p>24 A I would say that it's -- if you split</p> <p>25 the river in half, it would be 25 percent of</p>

<p style="text-align: right;">Page 78</p> <p>1 the US's side, so it's two -- I would say it's</p> <p>2 two-thirds of the way.</p> <p>3 So if you drew a line from the</p> <p>4 Mexico side to the United States side, it would</p> <p>5 be two-thirds of the way across the river.</p> <p>6 Q Okay. Right.</p> <p>7 Yeah. So if you were standing</p> <p>8 on the Mexico side and measuring it that way,</p> <p>9 you'd say you got to get about two-thirds</p> <p>10 across before where it's placed?</p> <p>11 A Correct.</p> <p>12 Q And roughly the remaining portion of</p> <p>13 the river --</p> <p>14 A The remaining third.</p> <p>15 Q Remaining third, okay.</p> <p>16 Would you say that -- okay. You</p> <p>17 said you saw -- there was a 14-foot Border</p> <p>18 Patrol boat out that day.</p> <p>19 You weren't on it, on your tour?</p> <p>20 A No.</p> <p>21 Q For a boat of that size, would you</p> <p>22 say that it is equally safe to pass the barrier</p> <p>23 on the US side versus the side where the</p> <p>24 two-thirds of the river is located, or would</p> <p>25 you say it's more safe to pass where the</p>	<p style="text-align: right;">Page 80</p> <p>1 on the buoy barrier, like roughly where would</p> <p>2 the blocks be?</p> <p>3 Do they extend outward for some</p> <p>4 distance?</p> <p>5 A They do extend outward for some</p> <p>6 distance.</p> <p>7 Q Okay.</p> <p>8 Both out towards the middle of</p> <p>9 the river and then out towards the US bank?</p> <p>10 A Both sides.</p> <p>11 Q Okay.</p> <p>12 In general, would you -- so if</p> <p>13 someone were piloting a vessel -- again, let's</p> <p>14 say that 14-foot Border Patrol vessel -- in the</p> <p>15 vicinity of where the buoy barrier is located,</p> <p>16 would you say it is safer to pass at a distance</p> <p>17 where you're outside the reach of those</p> <p>18 concrete blocks or would it be safer to pass in</p> <p>19 between the barrier and the concrete blocks?</p> <p>20 A You would need to be outside the</p> <p>21 concrete blocks. The concrete blocks are not</p> <p>22 that far from the barrier.</p> <p>23 Q Do you have an estimate you consider</p> <p>24 reliable as to how far they are from the</p> <p>25 barrier?</p>
<p style="text-align: right;">Page 79</p> <p>1 two-thirds of the river was located?</p> <p>2 A It was deeper water in the two-thirds</p> <p>3 of the river. So generally when you're on a</p> <p>4 vessel of any size, deeper water is always</p> <p>5 better.</p> <p>6 Q Okay.</p> <p>7 So that -- so it's deeper water</p> <p>8 on that side, and it would be a safer passage</p> <p>9 on that side?</p> <p>10 A Correct.</p> <p>11 Q Does the -- how was the barrier</p> <p>12 moored?</p> <p>13 A With concrete blocks.</p> <p>14 Q Do you have a sense of quantity, like</p> <p>15 how many or --</p> <p>16 A I have a sense of how many, but I'm</p> <p>17 not -- I -- I don't believe I delineated it in</p> <p>18 the report, but I know I read how many were</p> <p>19 there.</p> <p>20 I believe it was in Captain</p> <p>21 Timmel's report that I read how many were in</p> <p>22 there, but I don't recall offhand.</p> <p>23 Q Do those -- do you have some sense of</p> <p>24 the dimensions in terms of, you know, if you're</p> <p>25 looking -- let's say if someone were standing</p>	<p style="text-align: right;">Page 81</p> <p>1 A I believe I have -- I don't know if</p> <p>2 it's in this -- yes, it is in this report.</p> <p>3 On Exhibit 1, page 20, you can</p> <p>4 see that the -- that each style block is four</p> <p>5 to four-ish feet away, five feet away, and</p> <p>6 that's where they appeared to be for most of</p> <p>7 the barrier.</p> <p>8 Q You said -- you're looking at</p> <p>9 page 20?</p> <p>10 A Correct.</p> <p>11 Q And you're looking at one of the</p> <p>12 figure -- photos on this page?</p> <p>13 A Figure 18.</p> <p>14 Q Figure 18, okay.</p> <p>15 A You can see the center buoy has a</p> <p>16 yellow tag on it, and just below that yellow</p> <p>17 tag, there's one of the mooring blocks.</p> <p>18 Q Okay.</p> <p>19 So this is a mooring block where</p> <p>20 the top of the block is exposed on top of the</p> <p>21 water?</p> <p>22 A Correct, yes.</p> <p>23 Q Are all these pictures of the buoy</p> <p>24 barrier on page 19 and 20 pictures that you</p> <p>25 took?</p>

<p style="text-align: right;">Page 82</p> <p>1 A Yes.</p> <p>2 Q Okay.</p> <p>3 And obviously you took them the</p> <p>4 day of your site visit.</p> <p>5 A Correct.</p> <p>6 Q Okay.</p> <p>7 Have you looked at any photos of</p> <p>8 the buoys from after the point where it had</p> <p>9 been fully placed in the river but -- like on a</p> <p>10 date other than your site visit?</p> <p>11 A I believe I've seen those on --</p> <p>12 online, yes, when researching this.</p> <p>13 I think my original -- yeah, I</p> <p>14 thought there was one in here. My draft had it</p> <p>15 and then I replaced it with my own photos.</p> <p>16 Q And then picture -- Figure 17, it</p> <p>17 seems, might be an example of you can see the</p> <p>18 buoy barrier?</p> <p>19 A Mm-hmm.</p> <p>20 Q The orange buoy barrier.</p> <p>21 Are any of the concrete blocks</p> <p>22 visible in this picture or no?</p> <p>23 A One of them is, it looks like.</p> <p>24 Q Okay.</p> <p>25 So looking at that photo, if one</p>	<p style="text-align: right;">Page 84</p> <p>1 the barrier is not 100 percent a straight line.</p> <p>2 It's -- but I would say that that's probably --</p> <p>3 I would say between 18 and 25 feet, depending</p> <p>4 on where you are.</p> <p>5 Q Okay.</p> <p>6 And do you have information on</p> <p>7 the width of the river in that stretch?</p> <p>8 A I do, but I do not believe it's -- it</p> <p>9 is located in this report, the entire width of</p> <p>10 the river.</p> <p>11 I don't recall off the top of my</p> <p>12 head. But I do remember reading it and seeing</p> <p>13 it.</p> <p>14 Q So you're not -- you wouldn't be able</p> <p>15 sitting here to estimate what the width is; is</p> <p>16 that correct?</p> <p>17 A I would estimate the width there to</p> <p>18 be 300 feet.</p> <p>19 Q Okay. All right.</p> <p>20 So --</p> <p>21 A Maybe a little wider. Roughly,</p> <p>22 though, give or take 50 feet on either side of</p> <p>23 that.</p> <p>24 Q Is there -- do you know what the</p> <p>25 width is of the Annisquam River?</p>
<p style="text-align: right;">Page 83</p> <p>1 were to start from the lowest portion of the</p> <p>2 orange buoy barrier and orient their eyes a</p> <p>3 little bit to the left and a little bit down,</p> <p>4 is that where you're looking at?</p> <p>5 A Correct.</p> <p>6 Q Okay.</p> <p>7 And you understand that to be</p> <p>8 one of the mooring blocks?</p> <p>9 A It is one of them.</p> <p>10 Q Okay.</p> <p>11 So in that instance, it's not</p> <p>12 quite above the water but close enough to the</p> <p>13 surface to see it?</p> <p>14 A Correct.</p> <p>15 Q And what is your -- would you be able</p> <p>16 to estimate, if one's trying to say what's the</p> <p>17 width, you know, from the concrete blocks</p> <p>18 mooring this on one side to the concrete blocks</p> <p>19 mooring this on the other side, roughly what's</p> <p>20 the width?</p> <p>21 A Of the entirety of the barrier?</p> <p>22 Q Yes.</p> <p>23 A Just a visual eye estimate on the</p> <p>24 day, maybe 20 feet to 25 feet.</p> <p>25 The placement -- it's not 100 --</p>	<p style="text-align: right;">Page 85</p> <p>1 A It varies.</p> <p>2 Q Okay.</p> <p>3 What -- is there an estimated</p> <p>4 range of -- of its width?</p> <p>5 A Of the entirety of the river?</p> <p>6 Q Yes.</p> <p>7 A At its narrowest -- well, there's a</p> <p>8 couple of bridges, so that's your control</p> <p>9 point. So that's 35 feet.</p> <p>10 Q Okay.</p> <p>11 A Thirty-five -- 38 feet, actually, to</p> <p>12 be exact.</p> <p>13 Q That dimension, is that bridge</p> <p>14 clearance or is that width?</p> <p>15 A No, it's the breadth of the channel</p> <p>16 that goes through the river.</p> <p>17 Q Okay. Okay.</p> <p>18 A And then at its widest, some places</p> <p>19 are, you know, 800 to 1,000 feet wide at high</p> <p>20 tide. Again, 10-foot tidal range, you lose a</p> <p>21 lot of that shallow water. You can't navigate</p> <p>22 anymore because there's no water. So it's --</p> <p>23 it varies depending on the tide.</p> <p>24 Q Okay.</p> <p>25 And that's at high tide, you</p>

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<p>1 said?</p> <p>2 A Yes.</p> <p>3 Q What about at mean low tide?</p> <p>4 A You have areas that are 250 feet</p> <p>5 wide.</p> <p>6 Q Okay.</p> <p>7 A Yeah.</p> <p>8 150 feet to 200 feet, I'd say.</p> <p>9 Q What about the Gloucester Harbor? Do</p> <p>10 you recall -- like, is there -- how does it</p> <p>11 work?</p> <p>12 Is there sort of an entrance to</p> <p>13 the harbor that all vessels would have to use?</p> <p>14 A There's actually two.</p> <p>15 Q Two entrances?</p> <p>16 A Yeah. There's two channels that come</p> <p>17 in and then ultimately end up in one channel</p> <p>18 and then they split off again into two</p> <p>19 channels.</p> <p>20 Q Okay.</p> <p>21 And so do -- do you know what</p> <p>22 the width is of those channels, the two</p> <p>23 channels?</p> <p>24 A Between -- the actual marked federal</p> <p>25 channel is between 150 to 300 feet wide,</p>	<p>1 What's the basis for that</p> <p>2 expertise?</p> <p>3 A There's Corps requirements, Army</p> <p>4 Corps Engineer requirements. So for federal --</p> <p>5 I would be for a federal project -- or federal</p> <p>6 channels. As far as, like, little tributaries</p> <p>7 and waterways that are not navigable or not</p> <p>8 marked for navigation, I wouldn't know the</p> <p>9 depths.</p> <p>10 Q Okay.</p> <p>11 A If there's no publication or no</p> <p>12 information on them, then I wouldn't know, but</p> <p>13 I do know that it's between eight and nine feet</p> <p>14 for the Army Corps of Engineers for a federally</p> <p>15 marked channel.</p> <p>16 Q So between eight and nine feet</p> <p>17 minimum depth for a federally marked channel</p> <p>18 under Army Corps of Engineer regulations?</p> <p>19 A Yeah, for dredge -- for federal --</p> <p>20 for federal channels.</p> <p>21 Q All right.</p> <p>22 And that would be true for all</p> <p>23 types of federal channels or does it depend on</p> <p>24 what waterway network?</p> <p>25 A To my knowledge, that's for</p>
Page 87	Page 89
<p>1 depending on where exactly you are. It varies.</p> <p>2 Q Okay.</p> <p>3 And that would be -- that would</p> <p>4 apply to both of them, both of the two</p> <p>5 channels?</p> <p>6 A Yeah.</p> <p>7 Q Okay.</p> <p>8 And what is the depth at that</p> <p>9 location -- at those locations?</p> <p>10 A When you first get to the entrance of</p> <p>11 the harbor, it's -- I believe it's about</p> <p>12 35 feet. But as you proceed into the harbor,</p> <p>13 in the inner harbor where the channels split</p> <p>14 again, the north and south channel, it's</p> <p>15 between 18 and 30 feet.</p> <p>16 I think the controlling depth or</p> <p>17 the authorized depth is 18 and a half feet in</p> <p>18 the inner harbor.</p> <p>19 Q Okay.</p> <p>20 For inland waterways, including</p> <p>21 rivers, are you -- would you consider yourself</p> <p>22 an expert in what the required minimum depths</p> <p>23 are?</p> <p>24 A Yes.</p> <p>25 Q Okay.</p>	<p>1 federal -- federal channels or federal project</p> <p>2 areas.</p> <p>3 Each area has its own</p> <p>4 controlling depth. To my understanding, that's</p> <p>5 the minimum.</p> <p>6 Q I take it, just like the experience</p> <p>7 with Annisquam, there can be times when the</p> <p>8 actual depth is less than the minimum?</p> <p>9 A Pre-dredge, it was.</p> <p>10 Q Right.</p> <p>11 A Yes. Shoaling happens.</p> <p>12 Q So that can be true with -- well, and</p> <p>13 obviously, the dredge project there obviously</p> <p>14 was a federal -- federally funded project,</p> <p>15 correct?</p> <p>16 A Mostly.</p> <p>17 Q Mostly?</p> <p>18 A Mostly. There was some state funding</p> <p>19 in there to get us over the -- get us to the</p> <p>20 finish line.</p> <p>21 Q Okay.</p> <p>22 So would it be fair to say that</p> <p>23 waterways -- federal waterways may have a</p> <p>24 minimum depth but may not in actuality at every</p> <p>25 moment in time be at that minimum depth?</p>

<p style="text-align: right;">Page 90</p> <p>1 A Correct.</p> <p>2 Q You mentioned, I think, when you did</p> <p>3 your site visit you asked DPS if the day you</p> <p>4 were there was sort of a high water, low water,</p> <p>5 somewhere in between, right?</p> <p>6 A (Nods.)</p> <p>7 Q What did they say about that?</p> <p>8 A They said it's been consistently that</p> <p>9 depth for quite some time.</p> <p>10 Q Okay.</p> <p>11 Talking about consistently just</p> <p>12 during this year or were they saying further</p> <p>13 back than that?</p> <p>14 A Didn't specify.</p> <p>15 Q Okay.</p> <p>16 So do you know whether there</p> <p>17 have been times when there's been higher water</p> <p>18 in the vicinity of the buoy barrier such that</p> <p>19 none of the concrete mooring blocks are</p> <p>20 visible?</p> <p>21 A Do I know if there was? Yes.</p> <p>22 Q Okay.</p> <p>23 Has that happened?</p> <p>24 A I believe it has, yes.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">Page 92</p> <p>1 A I guess it would depend on a variety</p> <p>2 of things.</p> <p>3 Q What would those be?</p> <p>4 A If you were in a motorized vessel or</p> <p>5 a fan boat, if you were in a rowboat. Most of</p> <p>6 the deeper water was on the Mexican side, so</p> <p>7 you would maintain a pretty large distance away</p> <p>8 from the buoy barrier to traverse the river, to</p> <p>9 pass by it. Or I would.</p> <p>10 Q Okay.</p> <p>11 How would you -- can you clarify</p> <p>12 what would "pretty large" be, in your opinion?</p> <p>13 A Well, you would still have almost</p> <p>14 two-thirds of the river without any barrier</p> <p>15 obstruction, so 75 percent-ish.</p> <p>16 Q Were it not placed there, is it fair</p> <p>17 to say it would be safer to pilot a vessel,</p> <p>18 let's say a motorized vessel, closer to the US</p> <p>19 side than with these buoys in place there?</p> <p>20 MS. AL-FUHAID: Objection.</p> <p>21 Form.</p> <p>22 A Well, some of the -- it's very</p> <p>23 shallow where those buoys are placed in some</p> <p>24 areas of the barrier. So barrier or no</p> <p>25 barrier, I don't think it would be any safer,</p>
<p style="text-align: right;">Page 91</p> <p>1 Would you consider that to add</p> <p>2 to the potential risk if a vessel is passing</p> <p>3 by, if the water is high enough that none of</p> <p>4 them are visible?</p> <p>5 MS. AL-FUHAID: Objection.</p> <p>6 Form.</p> <p>7 A I would say it's all in the same,</p> <p>8 because if you were going to navigate or</p> <p>9 traverse a vessel, that -- if there was a</p> <p>10 physical barrier there, you wouldn't --</p> <p>11 More than likely, you wouldn't</p> <p>12 run a vessel that close to a physical barrier</p> <p>13 anyways, so it's all one and the same when you</p> <p>14 have so much more river to navigate around.</p> <p>15 Q Is there a distance -- understanding</p> <p>16 that the -- the barrier itself, the orange</p> <p>17 part, is not the full width of it --</p> <p>18 A Correct.</p> <p>19 Q -- due to the attached blocks, is</p> <p>20 there a distance from the orange barrier -- the</p> <p>21 orange part, talking about as you go out</p> <p>22 towards the middle of the river and closer to</p> <p>23 the Mexican side -- is there a distance that</p> <p>24 you would consider to be a safe distance for a</p> <p>25 vessel?</p>	<p style="text-align: right;">Page 93</p> <p>1 because you would probably run aground.</p> <p>2 Again, the depth -- your real</p> <p>3 depth of water is more towards the Mexican side</p> <p>4 than the US side. It's very shoaled on the US</p> <p>5 side of the river.</p> <p>6 Q If someone were in the water on the</p> <p>7 US side of where the buoy barrier is located</p> <p>8 and in distress, and somebody wanted to reach</p> <p>9 that area and get them out of the water, would</p> <p>10 this potentially impede their ability to get</p> <p>11 there as quickly as possible?</p> <p>12 A No.</p> <p>13 Q Why not?</p> <p>14 A We were unobstructedly able to</p> <p>15 traverse and circumnavigate the buoys just as</p> <p>16 easy on the Mexican side as we were the US</p> <p>17 side.</p> <p>18 Q And that was in a fan boat or</p> <p>19 airboat?</p> <p>20 A Fan boat, airboat.</p> <p>21 Q And you did pass by the barrier on</p> <p>22 each side, the US bank side and then the</p> <p>23 open-water Mexican --</p> <p>24 A Numerous times.</p> <p>25 Q Okay.</p>

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<p>1 A In Figures 16 and 17, I think you can</p> <p>2 actually see our wake as we traversed the US</p> <p>3 side.</p> <p>4 Q Are you -- do you have any</p> <p>5 information as to whether the barrier has</p> <p>6 always, since it was first placed, been in its</p> <p>7 current location or whether it has at some</p> <p>8 point been moved from one location to another?</p> <p>9 A I was told that it was -- well, I've</p> <p>10 seen photos of it slightly farther over, and</p> <p>11 then I was --</p> <p>12 I asked that specific question</p> <p>13 while it was down there after the fact, if it</p> <p>14 had been moved after the visit. And they said</p> <p>15 that it was farther over and it has been moved</p> <p>16 more towards the US side.</p> <p>17 Q Okay.</p> <p>18 So, I believe in your report,</p> <p>19 you state that it was strategically placed; is</p> <p>20 that right? Do you recall?</p> <p>21 A Yes.</p> <p>22 Q As an example, page 32?</p> <p>23 A Yes.</p> <p>24 Q You see that statement there?</p> <p>25 A Let me get to it. Yes -- let's see.</p>	<p>1 some point?</p> <p>2 A No, I'm not.</p> <p>3 Q Okay.</p> <p>4 And you're not anticipating</p> <p>5 doing that in this case, giving an opinion</p> <p>6 about the original placement of the buoy</p> <p>7 barriers?</p> <p>8 A No.</p> <p>9 Q And when you say "strategically</p> <p>10 situated," are you referring to an intentional</p> <p>11 strategy at the time of placement?</p> <p>12 A It appears that the buoys, in my</p> <p>13 opinion, were placed in a certain area where it</p> <p>14 gets -- it's deeper and then it starts to</p> <p>15 shallow up, where you would be able to easily</p> <p>16 potentially stand up.</p> <p>17 So the barriers would block</p> <p>18 somebody from swimming and standing and walking</p> <p>19 because it's so much shallower on that side of</p> <p>20 the river, so...</p> <p>21 And then due to my experience --</p> <p>22 my education on this matter, or my -- not</p> <p>23 education but my knowledge that I've gained on</p> <p>24 this matter, that was a high-traffic area.</p> <p>25 So that's a strategic -- when</p>
Page 95	Page 97
<p>1 (The deponent read the</p> <p>2 document.)</p> <p>3 A Yeah, "by strategically situating</p> <p>4 these barriers." I see it.</p> <p>5 Q Okay.</p> <p>6 So, "By strategically situating</p> <p>7 these barriers on shoal waters along the</p> <p>8 eastern bank of the river the barriers enhanced</p> <p>9 border security without unnecessarily impeding</p> <p>10 the movement of Class A or Class 1 vessels,</p> <p>11 these buoy barriers in no way diminish the</p> <p>12 ability of the vessels to traverse the</p> <p>13 Rio Grande River."</p> <p>14 Is that -- did I read the</p> <p>15 sentence correctly?</p> <p>16 A Yes, you did.</p> <p>17 Q Okay.</p> <p>18 So in giving that opinion, you</p> <p>19 are referring to where the buoy barrier is</p> <p>20 placed now, correct?</p> <p>21 A Correct.</p> <p>22 Q So you are not -- you are not, I</p> <p>23 assume, giving an opinion one way or another</p> <p>24 about the prior location in which the buoys</p> <p>25 were originally placed that you were shown at</p>	<p>1 you have a high-traffic area of border</p> <p>2 crossings or human crossings, then it's safe</p> <p>3 for me to assume that that was a strategic move</p> <p>4 for them to put them there.</p> <p>5 Q So that's something that -- that's</p> <p>6 your impression and you're assuming it to have</p> <p>7 been a strategic choice, but did you ever get</p> <p>8 information to verify, was that the actual</p> <p>9 thinking or plan?</p> <p>10 A I believe there's some articles that</p> <p>11 are in this report that talk about why the --</p> <p>12 why they chose that area to place those buoys,</p> <p>13 and it's because it was a high-traffic area or</p> <p>14 area of concern. So that's a strategic move.</p> <p>15 Q Could you show me what part of the</p> <p>16 report you're referring to, or what sources?</p> <p>17 A Right on page 7, there's a URL here.</p> <p>18 "Operation Lone Star Boosts Border Response</p> <p>19 with New Marine Barriers."</p> <p>20 I believe this is the article</p> <p>21 that talks about why they chose that area.</p> <p>22 Q Okay.</p> <p>23 A Or it may be the very next one on</p> <p>24 page 8. I can't -- I can't remember what -- I</p> <p>25 can't, you know...</p>

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<p>1 Q I understand.</p> <p>2 Just to be clear on the record,</p> <p>3 you're saying it could be either or both of</p> <p>4 what's cited on page 7, "Press Release:</p> <p>5 Operation Lone Star Boosts Border Response with</p> <p>6 New Marine Barriers" --</p> <p>7 A Mm-hmm.</p> <p>8 Q -- "Office of the Texas Governor</p> <p>9 (July 14, 2023)," right?</p> <p>10 A Yes.</p> <p>11 Q And then the other one you're</p> <p>12 referring to is a citation, Sarah Fortinsky,</p> <p>13 "Texas city declares emergency over migrant</p> <p>14 crossings" by The Hill, September 21, 2023,</p> <p>15 right?</p> <p>16 A Yes, sir.</p> <p>17 Q Okay.</p> <p>18 Any other sources besides</p> <p>19 potentially one or both of those that you would</p> <p>20 mention as sources of information about the</p> <p>21 strategic thinking of the placement?</p> <p>22 A Just what I -- the DPS officers</p> <p>23 stated that that entire area, Eagle Pass, was</p> <p>24 a -- a very active area for illegal border</p> <p>25 crossings.</p>	<p>1 what's reported in the articles.</p> <p>2 A I believe it's to -- it was placed</p> <p>3 there to prevent -- and I -- I -- I think one</p> <p>4 of the articles also talks about some safety</p> <p>5 aspects of it.</p> <p>6 Q Okay.</p> <p>7 But you can't recall which one?</p> <p>8 A I can't recall.</p> <p>9 Q Anything besides the -- these news</p> <p>10 articles in terms of information specifically</p> <p>11 documenting the thinking of those planning the</p> <p>12 placement that you -- that you...</p> <p>13 A Maybe some documents in discovery</p> <p>14 where they explained why, but I don't know the</p> <p>15 specific documents off the top of my head.</p> <p>16 But I do recall reading about</p> <p>17 the thought of why they placed them in that</p> <p>18 region, but it coincides with what we just</p> <p>19 talked about.</p> <p>20 Q Do you recall the author of the</p> <p>21 document or documents you're thinking of?</p> <p>22 A I do not.</p> <p>23 Q Have you reviewed anything authored</p> <p>24 by Cochrane?</p> <p>25 A I believe so.</p>
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<p>1 Q And you're referring to the DPS</p> <p>2 officers you spoke to during your site tour?</p> <p>3 A Correct.</p> <p>4 Q The ones that took you on the tour?</p> <p>5 A Correct.</p> <p>6 Q And at the time -- the two articles,</p> <p>7 at the time these were published, or at least</p> <p>8 at the time the first one was published in</p> <p>9 July, do you know, was the buoy barrier in its</p> <p>10 current placement or was it in a different</p> <p>11 placement?</p> <p>12 A I'm not sure.</p> <p>13 Q Okay.</p> <p>14 And same question as to the</p> <p>15 September 21st.</p> <p>16 A I'm not sure.</p> <p>17 Q Okay.</p> <p>18 And is your recollection that</p> <p>19 those articles or one or both speak to efficacy</p> <p>20 of the placement in terms of safety or in terms</p> <p>21 of deterring illegal activity, or is it both?</p> <p>22 A I would suspect it is both, but I'm</p> <p>23 not 100 percent sure. I wasn't there to place</p> <p>24 or in the talks to place the buoy barrier.</p> <p>25 Q I just mean your recollection of</p>	<p>1 Q Have you reviewed anything that you</p> <p>2 may have seen with a marking that said</p> <p>3 "attorneys' eyes only"?</p> <p>4 A I don't recall seeing anything like</p> <p>5 that.</p> <p>6 Q Okay.</p> <p>7 As part -- so was it part of</p> <p>8 your assignment in terms of becoming an expert</p> <p>9 on the case to develop an opinion as to whether</p> <p>10 the current placement of the buoy barrier is</p> <p>11 one that maximizes its safety relative to any</p> <p>12 vessels this might pass through that stretch of</p> <p>13 the river?</p> <p>14 A It was my assignment to give an</p> <p>15 opinion on the overall -- what my believing on</p> <p>16 the overall effectiveness was on the buoy</p> <p>17 barrier as a whole, and to determine whether it</p> <p>18 was a hazard to navigation or -- or vessels</p> <p>19 traversing the area.</p> <p>20 Q Okay.</p> <p>21 Now, when something is a hazard</p> <p>22 to navigation, does that generally mean that it</p> <p>23 is then impossible to pilot a vessel in the</p> <p>24 vicinity of that thing, whatever it might be?</p> <p>25 A No.</p>

<p style="text-align: right;">Page 102</p> <p>1 Q So it can be possible to pilot</p> <p>2 vessels through an area notwithstanding that</p> <p>3 there is a hazard?</p> <p>4 A Correct.</p> <p>5 Q Okay.</p> <p>6 That doesn't mean necessarily</p> <p>7 the hazard has ceased to exist? It just means</p> <p>8 it is possible still to pilot the vessel?</p> <p>9 A Correct.</p> <p>10 Q Okay.</p> <p>11 Have you experienced examples of</p> <p>12 that, like, for example, in your duties with</p> <p>13 the Coast Guard?</p> <p>14 A Yeah, floating debris.</p> <p>15 Q Okay.</p> <p>16 A Logs, trees, parts of wreckage after</p> <p>17 hurricanes or storms. Those are all -- can be</p> <p>18 hazardous in navigation. Missing aids to</p> <p>19 navigation, stuff like that.</p> <p>20 Q Okay.</p> <p>21 Is there anything about -- is</p> <p>22 there anything currently in place in the</p> <p>23 vicinity of the buoy barrier that would</p> <p>24 communicate to someone traveling in a vessel --</p> <p>25 waterborne vessel where the mooring blocks are?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q Okay.</p> <p>2 What page does that start?</p> <p>3 A Page 26 of Exhibit 1.</p> <p>4 Q So from page 26, about two-thirds of</p> <p>5 the way down, through the top of page 28?</p> <p>6 A Correct.</p> <p>7 (Counsel read document.)</p> <p>8 Q Have you as part of your evaluation</p> <p>9 sought any data to ascertain, you know, have</p> <p>10 there been changes in the number of crossings</p> <p>11 in this stretch of the river, you know, from --</p> <p>12 from the period before the buoy barrier was</p> <p>13 placed compared to the period after it was</p> <p>14 placed?</p> <p>15 A Not specific to the barrier itself.</p> <p>16 Q Okay.</p> <p>17 Did you seek from the DPS</p> <p>18 officer that was doing your site visit at least</p> <p>19 their anecdotal information on, you know, what</p> <p>20 have they seen in terms of crossings from</p> <p>21 before the barrier was placed in that area</p> <p>22 versus after?</p> <p>23 A They stated in the last six to eight</p> <p>24 months that border crossings were significantly</p> <p>25 down in that region, as low as 20 a day. And</p>
<p style="text-align: right;">Page 103</p> <p>1 A No.</p> <p>2 Q You were talking -- you said that</p> <p>3 part of your task in the case was to consider</p> <p>4 the effectiveness of the buoy barrier, and I</p> <p>5 assume part of that was effectiveness in terms</p> <p>6 of deterring the crossing of illegal migrants?</p> <p>7 A Correct.</p> <p>8 Q And what -- what did you do to</p> <p>9 evaluate that?</p> <p>10 A Well, it's -- it's outlined</p> <p>11 throughout my report. And in my opinion,</p> <p>12 looked at the overall construction of it, what</p> <p>13 the intended use was for.</p> <p>14 And my opinion states that</p> <p>15 pretty much anything that you do to act as a</p> <p>16 deterrent or a barrier is overall effective in</p> <p>17 deterring certain types of human behavior.</p> <p>18 Q Can you point me to what part of the</p> <p>19 report you consider --</p> <p>20 A -- I have an opinion specifically on</p> <p>21 it here -- I want to read it --</p> <p>22 Q Let's not talk over each other.</p> <p>23 A Oh, sorry.</p> <p>24 Q It's my fault as much as yours.</p> <p>25 A Sorry. Opinion 3.</p>	<p style="text-align: right;">Page 105</p> <p>1 the peak a few years ago was -- could be in the</p> <p>2 thousands.</p> <p>3 Q And did they attribute that to this</p> <p>4 buoy barrier or did they think there were other</p> <p>5 reasons?</p> <p>6 A They attributed it to everything that</p> <p>7 was going on down there between Border Patrol</p> <p>8 patrols, them, razor wire, National Guard, the</p> <p>9 buoy barrier, overall presence in total in that</p> <p>10 region.</p> <p>11 They said it was, you know, a</p> <p>12 combination of everything that they had been</p> <p>13 doing or trying to do.</p> <p>14 Q All right.</p> <p>15 You haven't attempted, I assume,</p> <p>16 to sort of statistically take into account all</p> <p>17 those factors and isolate to what extent the</p> <p>18 buoy barrier may be contributing to that change</p> <p>19 in what they observed?</p> <p>20 A No, I have not.</p> <p>21 Q And you're not aware of anybody else</p> <p>22 having done that type of a study?</p> <p>23 A I am not.</p> <p>24 Q Did you -- are you aware of other</p> <p>25 expert reports submitted in the case on behalf</p>

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<p>1 of Texas?</p> <p>2 A I am.</p> <p>3 Q Did you read of any those reports?</p> <p>4 A I did.</p> <p>5 Q Do you recall which ones?</p> <p>6 A I have them listed. I don't know</p> <p>7 if... Ancil Taylor. I can't recall everyone's</p> <p>8 name off the top of my head, but as I list them</p> <p>9 in here, the pleadings, declarations, appellate</p> <p>10 filings, and then the documents produced for</p> <p>11 the USA -- the other -- I have it listed as the</p> <p>12 "other Texas reports."</p> <p>13 Q So there -- there was a -- an author</p> <p>14 named Taylor? That's one that you recall</p> <p>15 reviewing?</p> <p>16 A Ancil Taylor.</p> <p>17 Q Ancil Taylor.</p> <p>18 Did you read a report by someone</p> <p>19 named Shields?</p> <p>20 A I don't recall.</p> <p>21 Q That name doesn't sound familiar?</p> <p>22 A I read so many documents relating to</p> <p>23 this, I don't want to speak untruthfully.</p> <p>24 Q Okay.</p> <p>25 Do you recall reading a report</p>	<p>1 Was there any Texas expert with</p> <p>2 whom you had conversations prior to signing</p> <p>3 your report?</p> <p>4 A Just one.</p> <p>5 Q And who was that?</p> <p>6 A Ancil Taylor.</p> <p>7 Q Okay.</p> <p>8 Did -- and did Mr. Taylor</p> <p>9 provide you any factual information or data</p> <p>10 that you relied on in reaching your opinion?</p> <p>11 A The only factual data he -- I was</p> <p>12 privy to was after I had already submitted my</p> <p>13 report.</p> <p>14 Q Okay.</p> <p>15 A It was a supplemental report.</p> <p>16 Q And then in terms -- again, in terms</p> <p>17 of conversation, did he -- in those, did he</p> <p>18 provide you any assumptions that you relied on?</p> <p>19 A No.</p> <p>20 Q Okay.</p> <p>21 And then -- and he's the only</p> <p>22 expert you recall having conversations with.</p> <p>23 A Yes.</p> <p>24 Q Okay.</p> <p>25 And then aside from his</p>
Page 107	Page 109
<p>1 by authors named Hart and Magers?</p> <p>2 A I don't believe I did.</p> <p>3 Q Okay.</p> <p>4 Do you recall reading a report</p> <p>5 by authors named Settemeyer and Rubinstein?</p> <p>6 A I don't believe I -- I don't recall.</p> <p>7 Q Do you recall reading a report by</p> <p>8 a -- someone named Zhao, Z-H-A-O?</p> <p>9 A No.</p> <p>10 Q Okay.</p> <p>11 A I -- I don't believe I read any -- I</p> <p>12 believe I only read reports that were -- one</p> <p>13 supplemental report for Texas and the reports</p> <p>14 for the USA.</p> <p>15 Q Okay.</p> <p>16 So do you think the Taylor</p> <p>17 report may have been the only Texas expert</p> <p>18 report that you reviewed?</p> <p>19 A Just the -- not even his report. A</p> <p>20 supplemental, I reviewed.</p> <p>21 Q Okay.</p> <p>22 And that was -- after it had</p> <p>23 been signed by him?</p> <p>24 A Correct.</p> <p>25 Q Okay.</p>	<p>1 supplemental report, other expert reports</p> <p>2 you've looked at would have been reports of</p> <p>3 United States' experts?</p> <p>4 A Correct.</p> <p>5 Q And I'm guessing you looked at the</p> <p>6 report from John Timmel, who is here today?</p> <p>7 A Correct.</p> <p>8 Q Did you look at a report by Adrian</p> <p>9 Cortez?</p> <p>10 A I did.</p> <p>11 Q Did you look at a report by a</p> <p>12 gentleman named MacAllister?</p> <p>13 A I did.</p> <p>14 Q And did you look at a report by a</p> <p>15 professor named Dr. Ben Johnson?</p> <p>16 A I'm not a -- I -- if it was part of</p> <p>17 the discovery that was given to me, then I</p> <p>18 reviewed it. It sounds familiar.</p> <p>19 Q Okay. All right.</p> <p>20 You're -- you are not, I take</p> <p>21 it, offering opinions in the case about</p> <p>22 historic navigation of the Rio Grande?</p> <p>23 A No.</p> <p>24 Q Okay.</p> <p>25 You're not offering any critique</p>

<p style="text-align: right;">Page 110</p> <p>1 of anybody else's opinion about historic 2 navigation? 3 A No. 4 Q Are you offering any opinions in the 5 case about water rights or the ability to use 6 flows, you know, of water within the 7 Rio Grande? 8 A It's not in my report. 9 Q Okay. 10 Are you offering opinions about 11 the efficacy of ways of increasing the 12 navigability of this stretch of the Rio Grande? 13 A I do offer some -- there is some 14 opinion in here about how you could do that or 15 what it would take to do that, so yes. 16 Q Okay. 17 Can you -- can you show me what 18 part of the report you're thinking of? 19 A It's Opinion 2. Pretty much all of 20 the page 24 of Exhibit 1 talks about a lot of 21 this stuff. 22 Cost, topography of the river, 23 depths. I think there's some other places, 24 too. Let me just take a quick gander through 25 it here.</p>	<p style="text-align: right;">Page 112</p> <p>1 proposal for an improvement, did you? 2 A After my report was submitted, there 3 was a supplemental from Ancil that showed costs 4 and all the various dams and sills and areas 5 that would -- and I believe there was a cost 6 analysis to certain things. 7 But it was a brief review. It 8 wasn't a real serious analysis, but it was 9 after this report was written. 10 Q Okay. 11 And that was a supplemental from 12 Taylor. Do you recall the date of that? 13 A I don't recall the date. It was 14 recently. Very recent. I've reviewed it in 15 the last week or so. 16 Q Okay. 17 So has he done two reports in 18 the case, like one report and then a 19 supplemental or is it just a -- 20 A I believe so. 21 Q But if he did two, his first one is 22 not what you looked at? 23 A No. 24 Q Just the supplemental. 25 Did you help him develop any of</p>
<p style="text-align: right;">Page 111</p> <p>1 (The deponent read the 2 document.) 3 A Page 5 of Exhibit 1, "The Rio Grande 4 poses significant challenges to transporting 5 commercial cargo on vessels or barges. Its 6 unsuitability for such purposes stems from 7 substantial obstacles, including the need for 8 extensive dredging," locks systems, because of 9 the nearly 600 foot of elevation changes in 10 this 335-mile stretch. 11 I think it's referenced 12 throughout the report, but mostly in Opinion 2, 13 you'd say. 14 Q So particularly, just now, you've 15 been looking at page 5 of -- I think it's 16 numbered paragraph 3. 17 Would that be sort of a summary 18 of this opinion? 19 A Yes, sir. 20 Q And then also Opinion 2 from the 21 bottom of page 24 to the -- about two-thirds of 22 the way through page 26? 23 A That's correct. 24 Q And you did not -- did you evaluate a 25 specific proposal or hypothetical project</p>	<p style="text-align: right;">Page 113</p> <p>1 the information that's in the supplemental or 2 you just reviewed it after it was complete? 3 A Just reviewed it. 4 Q Okay. 5 And you haven't -- I assume you 6 have not independently reached your own 7 conclusions to corroborate whatever his 8 findings were in the supplemental? 9 A So I did pick certain 10 latitude/longitude -- longitudinal geographic 11 points in his report and Googled them to see 12 what they were, and most of them show up on 13 Google Images in some fashion. 14 I just picked a handful of them 15 to kind of just check it -- check it out, see 16 if it was -- continued to align with my report, 17 which it did. 18 Q Okay. 19 And when you say "align" with 20 your report, how do you mean? 21 A That the Rio Grande is not navigable 22 for all the reasons outlined in this report. 23 Q Did his supplemental have any 24 discussion of costs of options to improve the 25 river for navigation?</p>

<p style="text-align: right;">Page 114</p> <p>1 A I believe it did.</p> <p>2 Q All right.</p> <p>3 And is that something that you</p> <p>4 independently looked at to verify --</p> <p>5 A No.</p> <p>6 Q -- if those numbers were accurate?</p> <p>7 A It has no reflection on my opinions.</p> <p>8 Q Okay.</p> <p>9 So you wouldn't -- you don't</p> <p>10 independently have an opinion as to what it</p> <p>11 would cost?</p> <p>12 A I do. Not an exact figure, but I</p> <p>13 know it's a monumental amount. Just from</p> <p>14 seeing smaller navigation projects and going</p> <p>15 and looking at what would need to happen here,</p> <p>16 I know that it would be a substantial number.</p> <p>17 I don't have an exact figure, though. But I</p> <p>18 know it would be very -- very costly.</p> <p>19 Q And do you have a specific type of</p> <p>20 project in mind when you say that?</p> <p>21 Like, are you referring to --</p> <p>22 for example, lock and dam, is that what you're</p> <p>23 thinking of or --</p> <p>24 A Yeah, locks or dams. Or, you know, I</p> <p>25 have other dredge projects in this region, and</p>	<p style="text-align: right;">Page 116</p> <p>1 Q Okay.</p> <p>2 And would you say that those two</p> <p>3 approaches have the same cost or can the costs</p> <p>4 vary?</p> <p>5 A I would assume that the costs would</p> <p>6 vary.</p> <p>7 Q And have you developed any specific</p> <p>8 at least hypothetical cost estimate of what it</p> <p>9 would cost to undertake either of those</p> <p>10 approaches in this stretch of the Rio Grande?</p> <p>11 A Just looked at the numbers that</p> <p>12 Mr. Taylor put together, as he is the dredging</p> <p>13 expert.</p> <p>14 Q Okay.</p> <p>15 So you would not be in a</p> <p>16 position, I take it, to testify one way or the</p> <p>17 other as to whether his numbers are reliable</p> <p>18 estimates?</p> <p>19 A I don't know what his cost per cubic</p> <p>20 foot was, but I know what the cost of cubic --</p> <p>21 probably not, no, no.</p> <p>22 Q And you haven't been asked to do that</p> <p>23 in this case?</p> <p>24 A No.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 115</p> <p>1 I know what the cost of them were.</p> <p>2 So comparing how small those</p> <p>3 were to -- to, you know, a 335-mile stretch of</p> <p>4 river, I can just imagine what the number would</p> <p>5 be.</p> <p>6 I probably couldn't even write</p> <p>7 it on a paper.</p> <p>8 Q Are you aware there are ways that a</p> <p>9 navigable channel can be improved that don't</p> <p>10 involve dredging?</p> <p>11 A Not that I'm aware of.</p> <p>12 Q Are there different methods of</p> <p>13 improvement that may have different costs</p> <p>14 associated with it?</p> <p>15 A I'm sure that you could have a series</p> <p>16 of lock systems that were flooded out that you</p> <p>17 could minimize the amount of dredging in a</p> <p>18 hypothetical situation. But other than that,</p> <p>19 no.</p> <p>20 Q Okay.</p> <p>21 So would you say that generally,</p> <p>22 either use of locks and dams or dredging are</p> <p>23 the only two ways to increase the navigability</p> <p>24 of a river system?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 117</p> <p>1 And that opinion is not in this</p> <p>2 report?</p> <p>3 A Correct.</p> <p>4 Q Earlier when I was asking you about,</p> <p>5 you know, when there's a hazard to navigation,</p> <p>6 it's still possible to pilot a vessel and you</p> <p>7 said yes, generally, would it be your</p> <p>8 assumption that all vessel captains are equally</p> <p>9 experienced?</p> <p>10 A No.</p> <p>11 Q Okay.</p> <p>12 There's going to be a range?</p> <p>13 Some are more experienced than others?</p> <p>14 A (Nods.)</p> <p>15 Q And if one is trying -- for example,</p> <p>16 in your capacity as harbormaster, to the extent</p> <p>17 that you were looking at what measures might be</p> <p>18 necessary to maintain safe use of a harbor,</p> <p>19 would your goal be to take into account that</p> <p>20 varying degree of experience of those using</p> <p>21 vessels? You want to make sure it's safe for</p> <p>22 everyone who's going to use it?</p> <p>23 A You always train and maintain to the</p> <p>24 lowest level of skill or knowledge.</p> <p>25 Q And that general principle should</p>

<p style="text-align: right;">Page 118</p> <p>1 apply across waterways when looking at 2 navigation safety issues? 3 A It could depend on what you are -- 4 if, you know, the degree in which, you know, if 5 you're in a jet ski or if you're on a 6 thousand-foot container ship, that will 7 obviously be different and -- to the degree in 8 which you determine, you know, navigability, 9 you know. 10 If you have a vessel that drafts 11 50 feet and the port's 30 feet deep, it's not 12 navigable to your vessel. 13 Q But -- but if, you know, if you 14 expected ten people to pilot the same type of 15 vessel, you know, through the entrance to the 16 harbor, for example, you're going to want to 17 make sure it's, you know -- measures are taken 18 to assure safety for all ten, not just for the 19 best pilots? 20 A Correct. 21 Q Okay. 22 When we were looking at the 23 picture on page 19 of your report, I think it's 24 Figure 15 -- this is a picture of the buoy 25 barrier on the day you visited, right?</p>	<p style="text-align: right;">Page 120</p> <p>1 may be a -- just go ahead and take a little 2 lunch break? 3 MS. AL-FUHAID: That sounds good 4 to me. 5 Want to take lunch? 6 THE DEPONENT: Sure, yeah. 7 Could use a head break anyway, so... 8 (Discussion off the record.) 9 (Lunch recess.) 10 BY MR. LYNK: 11 Q Earlier today we looked at three 12 passages in the report that you identified as 13 definitions from counsel. 14 I wanted to ask you about one 15 other paragraph. 16 A Okay. 17 Q This is paragraph -- the last 18 paragraph on page 8 of Exhibit 1. 19 A Oh, page 8, sorry. 20 (The deponent read the 21 document.) 22 Q Do you see a paragraph that starts, 23 "The RHA generally applies to 'navigable' 24 waters of the US," and then it continues? 25 A Yes. I believe part of this</p>
<p style="text-align: right;">Page 119</p> <p>1 A Yes. 2 Q Would it be possible, if a person is, 3 you know, trying to wade across the river, 4 would it be possible for them to climb over it, 5 the buoy barrier? 6 A In this specific area? Yes. 7 Q Okay. 8 Did you ask the DPS officers 9 during your site visit if they had seen that 10 happen? 11 A I did not. 12 Q Okay. 13 And they didn't on their own 14 mention whether they had seen that or not? 15 A They did not. 16 Q Have you seen just in the news 17 articles since the barrier was placed any 18 pictures of people wading at least around the 19 buoy barrier? 20 A I believe I have a photo in this 21 report of before it was actually installed, of 22 people walking in the vicinity, but I haven't 23 seen anything besides that. 24 MR. LYNK: Okay. 25 It's almost noon. I think it</p>	<p style="text-align: right;">Page 121</p> <p>1 definition is -- is part of the other ones and 2 part of it is mine. 3 I think I -- I think -- oh, I 4 thought we went over this with navigable 5 waters. I guess it just starts back a little 6 farther. 7 Q Got it. You're right. 8 A Yeah, yeah, sorry. 9 Q If you turn to the next page -- 10 A Yeah, so -- 11 Q -- there's a paragraph that starts 12 "Navigable waters." So basically -- 13 A It just -- 14 Q -- that's a continuing part of this 15 passage? 16 A Correct. 17 Q Okay. 18 A Yes. 19 Q All right. 20 So when we were talking about 21 the definitions from counsel and when we 22 referred to the one that at that point you said 23 starts on page 9, you just corrected to say 24 it's this passage starting here, the last 25 paragraph of page 8, and continuing through</p>

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<p>1 page 9, correct?</p> <p>2 A That is correct.</p> <p>3 Q Got it.</p> <p>4 And as to this one and the other</p> <p>5 two you mentioned in your testimony, those are</p> <p>6 the three definitions received from counsel?</p> <p>7 A Correct.</p> <p>8 Q And as to each of those, it would be</p> <p>9 accurate to say you didn't separately research</p> <p>10 them or separately develop those?</p> <p>11 You received those from counsel?</p> <p>12 A I received these from counsel but did</p> <p>13 not rely on them for the conclusions in my</p> <p>14 report.</p> <p>15 Q Okay.</p> <p>16 You didn't rely on them for the</p> <p>17 conclusions in your report, and they weren't --</p> <p>18 these three things weren't things that you</p> <p>19 developed yourself while you worked on your</p> <p>20 report?</p> <p>21 A Correct.</p> <p>22 Q Okay.</p> <p>23 And I -- so I wouldn't expect --</p> <p>24 there's no other discussion in the report that</p> <p>25 relies on these three definitions, the --</p>	<p>1 A So not -- I am an expert in the areas</p> <p>2 that apply to this report. So the Rivers and</p> <p>3 Harbors Act is a gigantic document that has to</p> <p>4 do with more than just permitting.</p> <p>5 For the subject of this report,</p> <p>6 I'm an expert in the section of the Rivers and</p> <p>7 Harbors Act that I talk about and give an</p> <p>8 opinion on.</p> <p>9 Q So which parts of the Rivers and</p> <p>10 Harbors Act statute would you consider yourself</p> <p>11 to be a legal expert at?</p> <p>12 A All the things that are outlined in</p> <p>13 this report that have to do with permitting of</p> <p>14 structures.</p> <p>15 Q And what provisions of the Rivers and</p> <p>16 Harbors Act statute do those things relate to?</p> <p>17 A I don't know off the top of my head</p> <p>18 what provision it is, but it's what is outlined</p> <p>19 in this report.</p> <p>20 Q Have you ever -- you said you've been</p> <p>21 associated with Section 10 permit applications,</p> <p>22 correct, in your work?</p> <p>23 A Yes, Chapter 91.</p> <p>24 Q Did you ever give legal advice with</p> <p>25 respect to those permit applications, legal</p>
Page 123	Page 125
<p>1 When I say "three," I mean your</p> <p>2 earlier testimony referred to two other places.</p> <p>3 A Correct.</p> <p>4 Q I could go back and verify which</p> <p>5 pages, but you understand what I was referring</p> <p>6 to, correct?</p> <p>7 A I do.</p> <p>8 Q Do you anticipate that you would</p> <p>9 testify at trial about those three definitions?</p> <p>10 A I do.</p> <p>11 Q You would testify about them?</p> <p>12 A To the -- my concurrence with them,</p> <p>13 that I agree with them, and that my conclusions</p> <p>14 that I've -- based on my training, experience</p> <p>15 and education correspond with these</p> <p>16 definitions.</p> <p>17 Q So do you consider yourself</p> <p>18 independently qualified to speak to -- of a</p> <p>19 definition set forth that begins, "The RHA</p> <p>20 generally applies," and then continuing through</p> <p>21 the next page? Is that something you are</p> <p>22 qualified to give an opinion about?</p> <p>23 A Yes, yes.</p> <p>24 Q Earlier you said you were not a legal</p> <p>25 expert in the Rivers and Harbors Act, right?</p>	<p>1 advice on whether the application had been done</p> <p>2 in a way that made it approvable under the</p> <p>3 Rivers and Harbors Act?</p> <p>4 A I have given advice to people in my</p> <p>5 official capacity as to their application</p> <p>6 process that relates to these permits as a</p> <p>7 municipal level of review.</p> <p>8 Q Would you have -- and you were a</p> <p>9 public official, I take it, as the Gloucester</p> <p>10 harbormaster?</p> <p>11 A Correct.</p> <p>12 Q Would you have held yourself out to</p> <p>13 the City of Gloucester as someone they could</p> <p>14 look to for a legal opinion as to whether the</p> <p>15 permit application was legally correct?</p> <p>16 A Yes, yes.</p> <p>17 Q And you have done that?</p> <p>18 A People, for example, that want to</p> <p>19 apply for a dock and gangway in front of their</p> <p>20 home, their first step in that process, which</p> <p>21 is -- eventually will be an Army Corps</p> <p>22 Engineering permit, their very first step is</p> <p>23 the Gloucester harbormaster's office.</p> <p>24 Q But you would specifically -- you</p> <p>25 would be comfortable representing to them that</p>

<p style="text-align: right;">Page 126</p> <p>1 you could legally advise them on --</p> <p>2 A I would give them opinions on</p> <p>3 different avenues and the legal process in</p> <p>4 which it was to obtain.</p> <p>5 I wouldn't represent them in any</p> <p>6 kind of courtroom setting, but part of my job</p> <p>7 was to advise and educate on the legal process</p> <p>8 or the processes on obtaining permits, not in a</p> <p>9 lawyer capacity, just as a public official and</p> <p>10 a department head in which these structures</p> <p>11 fell under my jurisdiction.</p> <p>12 Q This passage that we're looking at</p> <p>13 that starts on page 8, about eight lines down,</p> <p>14 it quotes some language from, it looks to be a</p> <p>15 court case called United States v. Republic</p> <p>16 Steel Corporation.</p> <p>17 Do you see that?</p> <p>18 A I do.</p> <p>19 Q So would you say that you have the</p> <p>20 expertise, for example, to interpret the</p> <p>21 significance of that court case and how it</p> <p>22 might apply in any subsequent cases?</p> <p>23 A No.</p> <p>24 Q And was there a reason that you took</p> <p>25 these definitions from counsel rather than</p>	<p style="text-align: right;">Page 128</p> <p>1 A Mm-hmm.</p> <p>2 Q What do you mean by saying that</p> <p>3 they're not "permanently moored"?</p> <p>4 A They could be removed. Generally,</p> <p>5 moorings are temporary in nature, so just like</p> <p>6 the mooring balls we observed out here in</p> <p>7 Boston Harbor on the way out to lunch, those</p> <p>8 are temporarily moored and can easily be</p> <p>9 removed or moved, depending on a variety of</p> <p>10 circumstances, whether a bigger boat needs to</p> <p>11 go there, you could move the moorings farther</p> <p>12 or closer apart, or you could remove them</p> <p>13 altogether.</p> <p>14 It's not -- moorings are</p> <p>15 generally temporary in nature, in my</p> <p>16 experience.</p> <p>17 Q Moorings are generally temporary in</p> <p>18 nature.</p> <p>19 Can there ever be a circumstance</p> <p>20 in which something is permanently moored in the</p> <p>21 water?</p> <p>22 A Yeah, usually pile-supported</p> <p>23 structures, like pilings, stuff like that.</p> <p>24 Q Can you explain just -- just for the</p> <p>25 benefit of the record, what would be a</p>
<p style="text-align: right;">Page 127</p> <p>1 writing them yourself?</p> <p>2 A I fully agree with these definitions,</p> <p>3 so I felt no need to write them for myself. I</p> <p>4 concur with the definitions that are -- were</p> <p>5 supplied to me.</p> <p>6 After doing a full analysis of</p> <p>7 the entirety of this report, I felt that these</p> <p>8 definitions were concurrent with my own</p> <p>9 conclusions.</p> <p>10 Q Did you ask for definitions to be</p> <p>11 provided?</p> <p>12 A I don't believe so.</p> <p>13 Q Okay.</p> <p>14 Did you need these legal</p> <p>15 definitions in order to write the remainder of</p> <p>16 your report?</p> <p>17 A I did not.</p> <p>18 Q So they are not significant to the</p> <p>19 conclusions you reach in your report?</p> <p>20 A Correct.</p> <p>21 Q There's -- I wanted to look at</p> <p>22 page 32 of your report. And do you see about</p> <p>23 five lines from the bottom of the page, there's</p> <p>24 a sentence that says, "The buoys are not</p> <p>25 permanently moored"?</p>	<p style="text-align: right;">Page 129</p> <p>1 pile-supported structure, an example of that?</p> <p>2 A A dock or gangway, a gangway to a</p> <p>3 dock. Like, for example, the one in front of</p> <p>4 Fan Pier here, there's hundreds of feet of</p> <p>5 dock. There's permanent pilings driven into</p> <p>6 the seabed floor that are designed for</p> <p>7 permanent placement.</p> <p>8 Moorings are, by law in</p> <p>9 Massachusetts, or to Corps standards, are not</p> <p>10 considered permanent structures, so they're not</p> <p>11 permitted under those provisions.</p> <p>12 Q Have you ever encountered a question</p> <p>13 about a houseboat and whether it was</p> <p>14 permanently moored or not?</p> <p>15 A I have.</p> <p>16 Q When have you seen that come up?</p> <p>17 A Our region of Massachusetts, we have</p> <p>18 quite a few houseboats. A little different</p> <p>19 than the ones you've seen in Seattle that are</p> <p>20 along bulkheads or piers. Ours are on</p> <p>21 moorings.</p> <p>22 The Annisquam River, the Essex</p> <p>23 River, the Ipswich River has dozens of</p> <p>24 houseboats. They were registered as boats in</p> <p>25 such a manner where they have MS numbers or are</p>

<p style="text-align: right;">Page 130</p> <p>1 federally documented in some cases if they met 2 the tonnage. 3 But this topic's come up quite a 4 bit, especially in this area of houseboats, and 5 they're not -- they're not considered 6 permanently moored because they're affixed to a 7 mooring. 8 And it ices in here in the 9 wintertime. Our inland waters get icy and 10 those things have to be removed. Houseboats 11 are not left out all winter. They would be 12 frozen in and damaged, so... 13 Q So in this area, you would say none 14 of the houseboats would be considered 15 permanently moored? 16 A Correct. 17 Q Any other example besides what you 18 were describing earlier of something -- a 19 nautical structure that might be permanently 20 moored? 21 A Not that I can think of. 22 Q And when you said a piling is used to 23 affix a dock, for example, to a waterways, is 24 that something different from mooring or is 25 that part -- a type of mooring, in your view?</p>	<p style="text-align: right;">Page 132</p> <p>1 about the barrier was moved, so this would fit 2 my conclusion here. 3 Q Are you making any assumptions about 4 how long it will remain in its current 5 placement? 6 A It's not up to me to decide how long 7 it's going to remain there. 8 Q Okay. 9 But just to be clear, when you 10 say it's temporary, that's not based on a 11 specific assumption that, you know, they'll -- 12 they'll take it out in a year or they'll take 13 it out in six months or something like that? 14 A No. 15 Q Okay. 16 Even if it were to remain in 17 place indefinitely, in your use of the term, 18 you would still consider it a temporary -- 19 A Correct. 20 Q -- placement? 21 A I would. 22 Q Okay. 23 You also talk on this page of 24 the report, page 5, about -- do you see a 25 sentence at the top, "I found no evidence of</p>
<p style="text-align: right;">Page 131</p> <p>1 A A mooring is a -- is a -- what I 2 consider a mooring is a round or a cement 3 disk -- doesn't have to be round -- to a chain 4 to some kind of floating buoy that the entire 5 structure -- or the entire apparatus is 6 considered a mooring. 7 A piling is a -- is a permanent 8 pole made of fiberglass, steel or wood that is 9 driven into the ground for the intention of not 10 being removed, ever. 11 Q Okay. 12 A Or unless it, you know, breaks, or a 13 hurricane or something like that happens. 14 Q And you refer on page 5 of your 15 report, if you look at numbered paragraph 5 on 16 the bottom of that page -- 17 A Mm-hmm. 18 Q -- you refer to the use of temporary 19 buoys. 20 Do you see that? 21 A I do. 22 Q And so you're saying that the buoy 23 barrier at issue in this case is temporary? 24 A Yes, because it can be easily moved, 25 and I think earlier in the deposition we talked</p>	<p style="text-align: right;">Page 133</p> <p>1 commercial navigation traveling upstream and/or 2 downstream on the Rio Grande River between 3 river miles 275.5 and 610, including in the 4 Eagle Pass area"? 5 Do you see that sentence? 6 A I do. 7 Q And you've mentioned on June 7th, you 8 took a tour of, like, two to three nautical 9 miles of the river, correct? 10 A Correct. 11 Q And that was in the vicinity of Eagle 12 Pass and the buoy barrier. 13 Have you toured any other 14 portion of the river between river miles 275.5 15 and 610? 16 A I have not physically toured it, but 17 I have watched an entirety of a helicopter 18 video, which is part of my report, photographs 19 from that, that have gone through the entire 20 stretch of 275.5 to 610. And some of those 21 photos are in -- excuse me -- start on -- let's 22 see here. 23 (Pause.) 24 A They're in here somewhere. 25 (Pause.)</p>

<p style="text-align: right;">Page 134</p> <p>1 A They start on page 15 of Exhibit 1, 2 and they go to page 17 of Exhibit 1, and these 3 are just a few examples throughout the entirety 4 of the videos. 5 Q And so this was a video that 6 ultimately looks at that entire stretch between 7 those two mile markers? 8 A Yes. 9 Q All right. 10 And it's all taken the same day, 11 I assume, as far as you -- 12 A I believe so. 13 Q Do you have any data relating to 14 commercial navigation or absence apart from 15 that visual data as reflected in the video 16 taken that day and then your own visual 17 observations the day of your tour? 18 A That included -- coupled with the 19 research of -- researching if any commercial 20 navigation has -- has or does take place on the 21 Rio Grande. I found no evidence anywhere that 22 concludes that there's anything commercial 23 happening because of all the reasons outlined 24 in this report. 25 Q All right.</p>	<p style="text-align: right;">Page 136</p> <p>1 Q And in saying that, that comes from 2 the experience you've had with the Corps's 3 review of dredging projects, correct? 4 A Correct. 5 And laws pertaining to commerce 6 as a federal boarding officer. Commercial and 7 recreational boating laws are much different. 8 Q Okay. 9 And ultimately -- in one of the 10 projects you mentioned there was an application 11 for a dredging project, and it ultimately was 12 improved, notwithstanding the lack of what you 13 would consider commercial navigation or what 14 the Corps, as you understood, considered it? 15 A I'm not sure what the overall 16 entirety on how it was approved, but there was 17 an analysis done, and originally it did not 18 meet the specifications because of everything 19 that I said earlier in the deposition, because 20 they don't consider commercial fishing or 21 recreational boating commerce. 22 But I guess throughout the 23 course, processes could be -- in the 24 cost-benefit analysis, there is -- public 25 safety is obviously weighed in on that.</p>
<p style="text-align: right;">Page 135</p> <p>1 And are you familiar with 2 whether there were ever kayak or canoe tours in 3 the Rio Grande? 4 A I see signs for kayak or canoe tours. 5 Q Okay. 6 But that isn't something you 7 encountered in your research? Or you saw 8 signs -- 9 A I saw signs. I saw signs for it 10 while I was down there. I may have passed over 11 something on the Internet about it at some 12 point, but I don't recall specifically. 13 But I do recall seeing signs 14 when I was in Eagle Pass for kayak and canoe 15 tours. 16 Q Okay. 17 If there were kayak and canoe 18 tours at a point in time, would that be a 19 commercial navigation activity? 20 MS. AL-FUHAID: Objection. 21 Form. 22 A Again, the Corps definitions by 23 themselves don't consider recreational boating 24 commercial commerce, or commercial activity, so 25 no.</p>	<p style="text-align: right;">Page 137</p> <p>1 Q Right. 2 And your testimony earlier was 3 that consideration of public safety and 4 facilitating emergency response, which would 5 otherwise be very lengthy -- 6 A Mm-hmm. 7 Q -- were factors in the approval of 8 that project? 9 A Yes. 10 Q Okay. 11 And so those are not -- those -- 12 those two factors in and of themselves are not 13 commercial navigation, correct? 14 MS. AL-FUHAID: Objection. 15 Form. 16 A I -- I don't believe so. 17 Q Okay. 18 Any other research that you 19 would add that you've done relating to the 20 current existence or absence of commercial 21 navigation within these mile markers? 22 A Looked at publications such as -- or 23 websites such as MarineTraffic to see if 24 there's ever been or is currently any vessels 25 situated within the Rio Grande River, AIS</p>

<p style="text-align: right;">Page 138</p> <p>1 traffic, marine traffic.</p> <p>2 Again, out of all my research, I</p> <p>3 found nothing that would constitute commerce</p> <p>4 along the Rio Grande.</p> <p>5 Q Would you make a distinction in</p> <p>6 thinking about different waterborne</p> <p>7 activities -- is there a principal distinction</p> <p>8 you would make between kayak tours and whale</p> <p>9 watching tours?</p> <p>10 MS. AL-FUHAID: Objection.</p> <p>11 Form.</p> <p>12 A Repeat the question.</p> <p>13 Q In -- in talking about different</p> <p>14 types of waterborne vessel activity, is there a</p> <p>15 distinction that you would make -- principal</p> <p>16 distinction that you would make between a kayak</p> <p>17 tour of a river and a whale watching tour?</p> <p>18 MS. AL-FUHAID: Objection.</p> <p>19 Form.</p> <p>20 A Yeah, there's a distinction. Kayak</p> <p>21 tours require little to no water to operate in,</p> <p>22 and a whale watch boat requires multiple feet</p> <p>23 of water to operate in.</p> <p>24 They also operate under Coast</p> <p>25 Guard -- they're a Coast Guard-inspected</p>	<p style="text-align: right;">Page 140</p> <p>1 A Yes.</p> <p>2 Q And this was -- you testified</p> <p>3 earlier -- I was asking you, you know, what are</p> <p>4 the options for improving the river's</p> <p>5 navigability, and I believe you said that</p> <p>6 dredging or locks and dams would be the -- were</p> <p>7 the two options; is that right?</p> <p>8 A Mm-hmm. Yes.</p> <p>9 Q Okay.</p> <p>10 And in this case, have you</p> <p>11 attempted to quantify, like, how extensive, for</p> <p>12 example, dredging would have to be in order to</p> <p>13 make that stretch of the Rio Grande a navigable</p> <p>14 channel?</p> <p>15 A I have not quantified it on paper.</p> <p>16 My experience is it would be very substantial,</p> <p>17 considering most parts of the Rio Grande River</p> <p>18 right now have no water in them or very little</p> <p>19 water, and to dredge to a depth that would</p> <p>20 support some kind of commerce is uncalculable</p> <p>21 to me. But I'm sure it is being -- it, you</p> <p>22 know, is quantifiable, for sure.</p> <p>23 Q Okay.</p> <p>24 A But I'm not going to throw a number</p> <p>25 at it, because I just don't know.</p>
<p style="text-align: right;">Page 139</p> <p>1 passenger vessel.</p> <p>2 I mean, there's multiple</p> <p>3 differences between kayak tours and a whale</p> <p>4 watch boat. Numerous safety requirements all</p> <p>5 the way down to FCC requirements for radios.</p> <p>6 Q Is it your assumption that kayak</p> <p>7 tours aren't subject to any sorts of regulatory</p> <p>8 oversight or requirements?</p> <p>9 A Other than wearing a life jacket</p> <p>10 during certain times of years, in this state,</p> <p>11 not that I'm aware of.</p> <p>12 Q And, again, page 5 of your report,</p> <p>13 under the paragraph enumerated 3 --</p> <p>14 A Mm-hmm.</p> <p>15 Q -- you have a sentence that says --</p> <p>16 and you're referring -- "it" meaning the Rio</p> <p>17 Grande River -- "Its unsuitability for such</p> <p>18 purposes stems from substantial obstacles,</p> <p>19 including the need for extensive dredging and</p> <p>20 the implementation of a complex system of locks</p> <p>21 to obtain the necessary depth to vessels or</p> <p>22 barges carrying commercial cargo in sufficient</p> <p>23 quantities to justify the commercial</p> <p>24 navigation."</p> <p>25 Do you see that sentence?</p>	<p style="text-align: right;">Page 141</p> <p>1 I know it would be a giant</p> <p>2 project, considering the smaller projects I've</p> <p>3 been involved in, and how long and expensive</p> <p>4 they were to complete.</p> <p>5 Q But you've not gone through the</p> <p>6 exercise in this case of attempting to</p> <p>7 conceptually identify what would be the scale</p> <p>8 of the project here, correct?</p> <p>9 A Correct.</p> <p>10 Q And then you've not attempted to</p> <p>11 quantify what would be the cost of that project</p> <p>12 at that scale?</p> <p>13 A Correct.</p> <p>14 Q Okay.</p> <p>15 And part of that sentence I</p> <p>16 read, towards the end, it refers to "sufficient</p> <p>17 quantities to justify the commercial</p> <p>18 navigation."</p> <p>19 I take it you've also not</p> <p>20 attempted to sort of define a threshold, like</p> <p>21 what is sufficient to make the project</p> <p>22 worthwhile?</p> <p>23 A If it's not in my report, I haven't</p> <p>24 quantified it.</p> <p>25 Q Okay.</p>

<p style="text-align: right;">Page 142</p> <p>1 And the next sentence says,</p> <p>2 "Addressing the nearly 600-foot elevation</p> <p>3 changes over the 335-mile stretch from Eagle</p> <p>4 Pass to Laredo, Texas, would require an</p> <p>5 impractical amount of resources and</p> <p>6 infrastructure investment."</p> <p>7 Do you see that?</p> <p>8 A I do.</p> <p>9 Q And again, I take it you've not</p> <p>10 attempted to sort of quantify, like, the</p> <p>11 threshold at which a resource investment would</p> <p>12 be impractical for a project?</p> <p>13 A No.</p> <p>14 Q The prior page, page 4, enumerated</p> <p>15 paragraph 1, there's a sentence there, it says,</p> <p>16 "The Rio Grande River between mile markers</p> <p>17 275.5 and 610, and particularly in the Eagle</p> <p>18 Pass area, does not meet the criteria of a</p> <p>19 navigable waterway conducive to commercial</p> <p>20 navigation such that it can operate as a</p> <p>21 highway of commerce."</p> <p>22 Do you see that sentence?</p> <p>23 A I do.</p> <p>24 Q You recall -- I was asking you</p> <p>25 earlier if -- if a specific water, the</p>	<p style="text-align: right;">Page 144</p> <p>1 Harbor here into Conley Terminal. That's a</p> <p>2 much different scenario. Both navigable</p> <p>3 waterways but both used for very different</p> <p>4 purposes.</p> <p>5 Q Okay.</p> <p>6 So some navigable waterways may</p> <p>7 be at a point in time a highway of commerce,</p> <p>8 and other navigable waterways may not be a</p> <p>9 highway of commerce?</p> <p>10 A Correct.</p> <p>11 Q On page 33, about four lines down,</p> <p>12 there's a sentence that says, "Over 75 percent</p> <p>13 of the river" -- referring to the Rio Grande --</p> <p>14 "remains open and unobstructed, with the</p> <p>15 deepest portions of the river encompassed</p> <p>16 within this 75 percent that lacks buoy</p> <p>17 barriers."</p> <p>18 Do you see that sentence?</p> <p>19 A I do.</p> <p>20 Q Earlier when I was asking you about</p> <p>21 where you observed the barrier placed and how</p> <p>22 much of the river was on the side, you know,</p> <p>23 from the barrier to the -- to the deepest part</p> <p>24 and then to the Mexican side, I think you said</p> <p>25 that was about two-thirds.</p>
<p style="text-align: right;">Page 143</p> <p>1 Annisquam, was a highway of commerce.</p> <p>2 But I guess more generally, do</p> <p>3 you consider the term "navigable waterway" to</p> <p>4 mean the same thing as the term "highway of</p> <p>5 commerce" such that all navigable waterways are</p> <p>6 highways of commerce?</p> <p>7 A No, they're different.</p> <p>8 Q Okay.</p> <p>9 How are they different?</p> <p>10 A A navigable waterway could be, for</p> <p>11 instance, the Annisquam River or its</p> <p>12 tributaries that are buoy-marked.</p> <p>13 You know, they have aids to</p> <p>14 navigation. They have charts. They have US</p> <p>15 Coast Pilot information or other information or</p> <p>16 publications that mariners use to determine</p> <p>17 navigability of a waterway.</p> <p>18 A highway of commerce is more of</p> <p>19 a commercial port that has all of those</p> <p>20 characteristics plus a lot of other</p> <p>21 infrastructure to support it, and is known for</p> <p>22 or is being currently used as a waterway of</p> <p>23 high commerce or high traffic.</p> <p>24 Q Okay.</p> <p>25 A Such as President Roads in Boston</p>	<p style="text-align: right;">Page 145</p> <p>1 So if I'm reading -- reading</p> <p>2 this now and understanding what you testified</p> <p>3 today, would I be reading this right to --</p> <p>4 that, you know, over two-thirds of the river</p> <p>5 remains open and unobstructed?</p> <p>6 A Two-thirds, which I believe is 66.66</p> <p>7 percent to 75 percent. I gave it a percentage</p> <p>8 here. I gave it -- you know, a fraction</p> <p>9 earlier --</p> <p>10 Q Right.</p> <p>11 A -- but it's within the ballpark of</p> <p>12 being correct.</p> <p>13 Q I understand.</p> <p>14 At page 26 of the report,</p> <p>15 there's a reference about -- well, about a</p> <p>16 third of the way down, do you see a reference</p> <p>17 to "Any proposed project of this magnitude</p> <p>18 would undoubtedly undergo stringent</p> <p>19 cost-benefit analysis, as mandated by the US</p> <p>20 Army Corps of Engineers"?</p> <p>21 Do you see that -- that part of</p> <p>22 that sentence?</p> <p>23 A I do.</p> <p>24 Q And then, you've mentioned this</p> <p>25 earlier. Just to be clear, are there -- apart</p>

<p style="text-align: right;">Page 146</p> <p>1 from your own experience with applications to</p> <p>2 the Corps, is there anything else that you're</p> <p>3 relying on to discuss what the Corps of</p> <p>4 Engineers mandates in connection with projects</p> <p>5 to improve navigability?</p> <p>6 A I understand the -- the means in</p> <p>7 which the Army Corps funds dredge projects. So</p> <p>8 that's also part of my opinion here, is that</p> <p>9 there is a work plan that is presented from the</p> <p>10 Corps to Congress to pass for funding for</p> <p>11 projects that are mostly deep-draft projects,</p> <p>12 such as Boston Harbor, Baltimore, Tampa, such</p> <p>13 like that. Those make it to the Corps work</p> <p>14 plan.</p> <p>15 And then there are shallow-draft</p> <p>16 navigation projects that are supplemental after</p> <p>17 the fact. Those are all part of this opinion,</p> <p>18 coupled with the cost-benefit analysis that</p> <p>19 would have to be done to try to get a project</p> <p>20 of this magnitude funded.</p> <p>21 So I know that that's the</p> <p>22 process in which the Corps uses, and that's the</p> <p>23 process in which Congress authorizes funds for</p> <p>24 these types of projects.</p> <p>25 Q Do you know whether there can be any</p>	<p style="text-align: right;">Page 148</p> <p>1 regulatory process on the Mexico side of the</p> <p>2 country, but stuff like that.</p> <p>3 Q Okay.</p> <p>4 And I -- are you an expert in</p> <p>5 the international -- in international treaties</p> <p>6 that may apply?</p> <p>7 A No, I'm not.</p> <p>8 MR. LYNK: Let's go off the</p> <p>9 record for a minute.</p> <p>10 (Discussion off the record.)</p> <p>11 MR. LYNK: I'll pass the</p> <p>12 witness.</p> <p>13 MS. AL-FUHAID: Okay.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 147</p> <p>1 circumstances in which there are exceptions to</p> <p>2 the requirement -- or, as you understand it,</p> <p>3 for cost-benefit analysis?</p> <p>4 A I guess part of it could be public</p> <p>5 safety.</p> <p>6 Q Okay.</p> <p>7 Could there be other</p> <p>8 circumstances or --</p> <p>9 A Not that I am aware of.</p> <p>10 Q And later on the page, do you see a</p> <p>11 reference to "stringent economic criteria</p> <p>12 mandated by regulatory authorities and</p> <p>13 international treaties"?</p> <p>14 This is still on page 26.</p> <p>15 A Mm-hmm. Yes.</p> <p>16 Q There in that sentence, what</p> <p>17 regulatory authorities are you referring to?</p> <p>18 A Department of Environmental</p> <p>19 Protection, US Army Corps of Engineers. I</p> <p>20 can't imagine how many towns or local</p> <p>21 conservation commissions in Texas the</p> <p>22 Rio Grande borders that would have a say in</p> <p>23 this.</p> <p>24 It's a bordering waterway</p> <p>25 between two countries, so I'm not sure of the</p>	<p style="text-align: right;">Page 149</p> <p>1 EXAMINATION</p> <p>2 BY MS. AL-FUHAID:</p> <p>3 Q I have some cross. Okay.</p> <p>4 Mr. Ciarametaro, T.J., you</p> <p>5 testified earlier in response to one of</p> <p>6 Mr. Lynk's questions that you are a legal</p> <p>7 expert in maritime laws.</p> <p>8 Do you recall that?</p> <p>9 A I do.</p> <p>10 Q You are not a lawyer, correct?</p> <p>11 A Correct.</p> <p>12 Q When you said that you were a legal</p> <p>13 expert in maritime laws, what did you mean?</p> <p>14 A I mean throughout the course of my</p> <p>15 training and experience in my jobs, I've become</p> <p>16 very proficient at those specific parts of the</p> <p>17 law, such as maritime navigation laws or</p> <p>18 maritime rules of the road.</p> <p>19 I'm an expert in that, and those</p> <p>20 are laws, so I'm -- that's what I meant by</p> <p>21 that.</p> <p>22 Q So would it be more accurate to say</p> <p>23 that you're a navigation expert rather than a</p> <p>24 legal expert?</p> <p>25 A Yes. I am not a lawyer.</p>

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<p>1 Q So you also testified that you're not</p> <p>2 a legal expert on the Rivers and Harbors Act.</p> <p>3 Do you recall that?</p> <p>4 A I do.</p> <p>5 Q What did you mean by that?</p> <p>6 A So I mean I'm not a lawyer. Again, I</p> <p>7 am an expert in the laws pertaining to</p> <p>8 permitting all these -- all structures, piers,</p> <p>9 docks, boat ramps, under the Rivers and Harbors</p> <p>10 Act, but I'm not a legal expert on the</p> <p>11 document, but I am an expert in the permitting</p> <p>12 process, which is outlined in this report.</p> <p>13 Q And so is it accurate to say that you</p> <p>14 have offered opinions on that process under the</p> <p>15 Rivers and Harbors Act but not legal opinions?</p> <p>16 A Yes. Legal opinions are left up to</p> <p>17 the court.</p> <p>18 Q Now, I'd like you to turn to</p> <p>19 Exhibit 1, page -- let's see -- page 32.</p> <p>20 A Okay.</p> <p>21 Q And it's the last paragraph under</p> <p>22 opinion No. 4. I'd like to direct your</p> <p>23 attention to that paragraph.</p> <p>24 A Okay.</p> <p>25 Q Is it your opinion that the buoys do</p>	<p>1 Q What is the basis for that opinion?</p> <p>2 A Again, all the research and all the</p> <p>3 photographs and all the documentation inside</p> <p>4 this report, plus my firsthand eyewitness of</p> <p>5 the buoy barrier in the Rio Grande gives me --</p> <p>6 gives me that opinion.</p> <p>7 Q Now, earlier you and Mr. Lynk</p> <p>8 discussed some projects that you have worked on</p> <p>9 under which you sought Section 10 permits from</p> <p>10 the US Army Corps of Engineers under the Rivers</p> <p>11 and Harbors Act.</p> <p>12 Do you recall discussing that</p> <p>13 with him?</p> <p>14 A Yes, I do.</p> <p>15 Q How many years of experience do you</p> <p>16 have doing the permitting process under the</p> <p>17 Rivers and Harbors Act -- under Section 10 of</p> <p>18 the Rivers and Harbors Act?</p> <p>19 A Roughly nine.</p> <p>20 Q And can you estimate as to how</p> <p>21 many -- just an estimate, not an exact</p> <p>22 number -- can you estimate how many projects</p> <p>23 you have worked on that involve that permitting</p> <p>24 process?</p> <p>25 A I've been involved in that process</p>
Page 151	Page 153
<p>1 not affect the course of the Rio Grande River</p> <p>2 in such a manner as to impact its navigable</p> <p>3 capacity?</p> <p>4 A Correct.</p> <p>5 Q What is the basis for that opinion</p> <p>6 that the buoys do not affect the course of the</p> <p>7 Rio Grande River in that manner?</p> <p>8 A For all things that we discussed</p> <p>9 today in this deposition, my personal</p> <p>10 experience in that area, being on a boat and</p> <p>11 witnessing that area firsthand, the totality of</p> <p>12 this entire report gives me that opinion.</p> <p>13 Q And is it your opinion that the buoys</p> <p>14 do not affect the location of the Rio Grande</p> <p>15 River in a manner as to impact its navigable</p> <p>16 capacity?</p> <p>17 A Yes.</p> <p>18 Q What's the basis for that opinion?</p> <p>19 A Same as what I just gave for the do</p> <p>20 not affect the course.</p> <p>21 Q And is it your opinion that the buoys</p> <p>22 do not affect the condition of the Rio Grande</p> <p>23 River in such a manner as to impact its</p> <p>24 navigable capacity?</p> <p>25 A Yes.</p>	<p>1 from people -- private people trying to permit</p> <p>2 those processes -- trying to obtain those</p> <p>3 permits, or are you looking for myself</p> <p>4 actively, or all together?</p> <p>5 Q All together.</p> <p>6 A Hundreds.</p> <p>7 Q Have you -- have some of those --</p> <p>8 have some of those projects been for the</p> <p>9 placement of -- strike that.</p> <p>10 Have you been involved in any</p> <p>11 projects -- set aside whether under Section 10</p> <p>12 or not, just any projects at all in which you</p> <p>13 placed buoys in a waterway?</p> <p>14 A Yes.</p> <p>15 Q Can you give some examples of such</p> <p>16 projects?</p> <p>17 A Gloucester Harbor or Gloucester</p> <p>18 proper, the municipality has between, like,</p> <p>19 1400, 15- or 16- -- between 1400 and 1600</p> <p>20 permitted moorings, mooring balls and mooring</p> <p>21 buoys that are privately held but permitted</p> <p>22 through the city and my department.</p> <p>23 The City of Gloucester has 30</p> <p>24 transient mooring buoys that we install, take</p> <p>25 care of, maintain and move periodically.</p>

<p style="text-align: right;">Page 154</p> <p>1 We've replaced numerous buoys</p> <p>2 and boundary buoys for marine events over the</p> <p>3 years, schooner races, fireworks, no-swim</p> <p>4 areas, temporarily closed beaches for</p> <p>5 pollution.</p> <p>6 Every year we annually put in 30</p> <p>7 no-wake buoys through all -- throughout</p> <p>8 navigable waterways of Gloucester and</p> <p>9 tributaries.</p> <p>10 No-anchor buoys in certain areas</p> <p>11 for certain times of year, certain events, such</p> <p>12 as fireworks, where a barge is going to come</p> <p>13 in. We'll put buoys and buoy barriers up</p> <p>14 around certain areas and coves so boats don't</p> <p>15 get -- you know, aren't in there while the</p> <p>16 fireworks are going off. Hundreds of buoys.</p> <p>17 Q Do you recall whether for any of</p> <p>18 those projects for placing buoys in the -- in a</p> <p>19 waterway, like you just mentioned, did you seek</p> <p>20 and obtain a permit from the US Army Corps of</p> <p>21 Engineers under Section 10?</p> <p>22 A No. No, I did not.</p> <p>23 Q Why did you not seek a permit under</p> <p>24 Section 10 before placing those buoys?</p> <p>25 A 310 CMR, which is Code of</p>	<p style="text-align: right;">Page 156</p> <p>1 average high tide mark, any structure that is</p> <p>2 permanently placed and is below that, you need</p> <p>3 to get a -- in this state, it's called a</p> <p>4 Chapter 91 permit, which is a DEP and a Corps</p> <p>5 permit.</p> <p>6 Those are, again, permanent</p> <p>7 structures. They have not-permanent</p> <p>8 structures, such as Section 10A of Chapter 91,</p> <p>9 which is a temporary float permit or a dock</p> <p>10 permit where the infrastructure is removable</p> <p>11 and nothing is permanent below the high-water</p> <p>12 mark, you do not need to seek a Corps permit</p> <p>13 for.</p> <p>14 Q So is it accurate to say -- well, do</p> <p>15 you consider the buoys -- buoys to be a</p> <p>16 structure needing a permit?</p> <p>17 A No, I do not.</p> <p>18 Q Why is that? What is the basis for</p> <p>19 your opinion?</p> <p>20 A For all reasons I just explained, to</p> <p>21 include that they are not structures, they are</p> <p>22 mooring balls, they're buoys. And the law does</p> <p>23 not require you to permit and get a federal</p> <p>24 court order for, you know, temporary placement</p> <p>25 of buoys or moorings that are not permanent.</p>
<p style="text-align: right;">Page 155</p> <p>1 Massachusetts Regulations -- I think it's</p> <p>2 Chapter 9, Waterways -- discusses all of when</p> <p>3 you would need to further your permitting</p> <p>4 process along -- up to the DEP or to the Army</p> <p>5 Corps of Engineers.</p> <p>6 And mooring buoys are not --</p> <p>7 are -- are held and issued by the local</p> <p>8 authority. So the local authority in that case</p> <p>9 was me, the harbormaster.</p> <p>10 So if you are looking for a</p> <p>11 mooring permit to put in a mooring ball or</p> <p>12 buoy, you get on a local list, and the issuing</p> <p>13 authority is the municipality. It's not the</p> <p>14 Army Corps of Engineers.</p> <p>15 Q When determining whether something</p> <p>16 that you -- a project that was going to result</p> <p>17 in something being placed -- some object being</p> <p>18 placed in a waterway, how did you determine</p> <p>19 whether to seek a permit from US Army Corps of</p> <p>20 Engineers?</p> <p>21 A It's outlined in 310 CMR Chapter 9 on</p> <p>22 when you need to seek those types of permits.</p> <p>23 General rule of thumb is a permanent structure</p> <p>24 that is below the mean high-water mark. So the</p> <p>25 average high-water mark for the year or the</p>	<p style="text-align: right;">Page 157</p> <p>1 Q Is that understanding of the law, is</p> <p>2 that based on your training, education and</p> <p>3 experience?</p> <p>4 A Yes.</p> <p>5 Q Is it your opinion that the buoys you</p> <p>6 observed in the Rio Grande River, the buoys</p> <p>7 that Texas placed, are they similar to the</p> <p>8 buoys that you have placed that did not need</p> <p>9 permits?</p> <p>10 A Buoys are -- they're similar in</p> <p>11 material. The sizes vary. But a buoy is a</p> <p>12 buoy is a buoy, you know. They come in all</p> <p>13 different shapes or sizes.</p> <p>14 Q Now, you -- I would like to direct</p> <p>15 you back to that paragraph on page 32 that</p> <p>16 begins with the first sentence, "Finally, the</p> <p>17 buoys are not other structures under the RHA."</p> <p>18 A I see it.</p> <p>19 Q Now, I would like you to read that</p> <p>20 paragraph.</p> <p>21 A The entirety?</p> <p>22 Q Well, I mean, you can -- you can read</p> <p>23 it to yourself.</p> <p>24 And I want to ask you, you had</p> <p>25 testified earlier in response to one of</p>

<p style="text-align: right;">Page 158</p> <p>1 Mr. Lynk's questions that that entire paragraph 2 was provided to you by counsel for Texas. 3 Was that entire paragraph, in 4 fact, provided to you, or does it contain any 5 of your own separate conclusions? 6 A Well, the top couple sentences are my 7 conclusion, and the bottom one, two, three 8 sentences are mine. 9 The -- what I was referring to 10 is the actual -- I guess it would be the center 11 of the paragraph where it pertains to the 12 actual definition under United States v. Hall: 13 "Structures may" -- "must affect," the actual 14 definition. But, "The buoys do not affect the 15 course, location, or condition of the 16 Rio Grande River in such a manner as to impact 17 its navigable capacity, for all reasons 18 discussed elsewhere in this report; therefore, 19 the buoys are not structures," that belongs to 20 me. That is my work and my opinion. 21 And the top, "Finally, the buoys 22 are not structures under the RHA. 'Structures' 23 means 'any pier, boat dock, boat ramp, wharf, 24 dolphin, weir, boom, breakwater, bulkhead, 25 revetment, riprap, jetty, artificial island,</p>	<p style="text-align: right;">Page 160</p> <p>1 definition or is that your own definition? Or 2 was that -- was that supplied to you? 3 A I know that I added some to this 4 definition. I'm not sure, I'm not exactly sure 5 where I stopped and started here. 6 (The deponent read the 7 document.) 8 A "The buoys are..." that is mine. So 9 I believe the definition starts at 10 "structures," that was provided to me, now 11 reading through this entire thing here. 12 Q Okay. 13 A So the first sentence and the last 14 three. 15 Q The last three lines or the last -- 16 A The last three lines, yes. 17 (Simultaneous speech.) 18 (Reporter interrupted.) 19 A Sorry about that. 20 I'm trying to just think back 21 because I know I changed stuff in this opinion 22 a couple times, so I'm just trying to make sure 23 I'm going on the record with the right thing 24 here. 25 Yeah, "Finally, the buoys are</p>
<p style="text-align: right;">Page 159</p> <p>1 reef, permanent structure, power or 2 transmission lines, permanently moored floating 3 vessel, pilings," that's my work as well. 4 Q Well, let me ask you about that. 5 A Well, not the -- 6 Not quite that far. No, I 7 believe that is -- I believe that -- I believe 8 that I wrote the top part of this. I can't 9 remember specifically. 10 I think I may have changed a few 11 things in here, but definitely the bottom. 12 Q Okay. 13 A I don't recall how far down I went 14 with this definition, but I know that -- 15 Q Did you -- I'm sorry. I didn't mean 16 to cut you off. 17 A No, go for it. I'm just trying to 18 think back now. 19 Q The second sentence, the second 20 sentence of the paragraph -- 21 A Mm-hmm. 22 Q -- where it says -- the first word of 23 that sentence, "structures"? 24 A Correct. 25 Q Is that from the regulatory</p>	<p style="text-align: right;">Page 161</p> <p>1 not other structures under the RHA." That's 2 me. 3 "Structure" starts the 4 definition. And then the last three sentences, 5 where "The buoys do not affect the course, 6 location," that's where I come back in as well. 7 Q Okay. 8 A I had changed some of these opinions 9 a few times, so I was just trying to think 10 back, make sure that I'm back -- I'm speaking 11 accurately here. 12 Q Okay. 13 Now, I'd like to direct your 14 attention to page 19 of your report -- 15 A Mm-hmm. Okay. 16 Q -- to Figure 15. 17 A Yup. 18 Q Now, you testified earlier in 19 response to one of Mr. Lynk's questions that 20 you took this picture on the day of your site 21 visit to Eagle Pass; is that correct? 22 A Yes. 23 Q And you also testified earlier that 24 in this spot, you believe that it would be 25 possible to climb over the buoys.</p>

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<p>1 Do you recall saying that?</p> <p>2 A I do.</p> <p>3 Q Why do you believe that?</p> <p>4 A This is towards the end of the buoys</p> <p>5 where -- I believe it would be the north side,</p> <p>6 and they're aground here because the water</p> <p>7 level is quite low. Or they appear to be</p> <p>8 aground.</p> <p>9 Q Did you try to climb over them?</p> <p>10 A I did not.</p> <p>11 Q Did you observe anybody climbing over</p> <p>12 them during the time that you visited the site?</p> <p>13 A I did not.</p> <p>14 Q When you -- when you were in Eagle</p> <p>15 Pass on your site visit, did you -- did you</p> <p>16 touch the buoys?</p> <p>17 A The ones on land, I did.</p> <p>18 Q So you did touch them?</p> <p>19 A Mm-hmm. Yes.</p> <p>20 Q Did you touch the ones that are --</p> <p>21 that are in the water?</p> <p>22 A No.</p> <p>23 Q Do you believe it would be possible</p> <p>24 for you to have climbed over, or for a person</p> <p>25 to have climbed over the buoys that are resting</p>	<p>1 try to get over an obstacle when you were</p> <p>2 standing vice swimming.</p> <p>3 Q But you did not observe anyone doing</p> <p>4 that?</p> <p>5 A I did not.</p> <p>6 Q Or attempting to do that?</p> <p>7 A I did not.</p> <p>8 And, again, this is the first --</p> <p>9 this is like the top string where the buoys</p> <p>10 start, and then the rest of them that go south</p> <p>11 are -- are in deeper water. This is like a</p> <p>12 little shoal area here.</p> <p>13 Q Now, Mr. Lynk asked you earlier about</p> <p>14 the possibility of the buoys damaging a vessel</p> <p>15 that was trying to navigate from bank to bank</p> <p>16 across the river.</p> <p>17 Do you recall him asking you</p> <p>18 about that?</p> <p>19 A I do.</p> <p>20 Q And I believe you testified -- I'm</p> <p>21 not quoting you directly, but you testified</p> <p>22 something to the effect that you believed that</p> <p>23 the buoys could damage a vessel if a vessel</p> <p>24 collided with it.</p> <p>25 Do you recall saying that?</p>
Page 163	Page 165
<p>1 or floating in the water?</p> <p>2 A The ones that are floating? No.</p> <p>3 Q Why do you believe that would not be</p> <p>4 possible?</p> <p>5 A They're quite large. And from a</p> <p>6 swimming position, they spin, so there's no --</p> <p>7 nothing to grip onto. There's no handles.</p> <p>8 There's nothing.</p> <p>9 I'm not sure how it would be</p> <p>10 possible to go from a swimming position and</p> <p>11 climb over those, since they do rotate.</p> <p>12 Q Do you believe a person could walk up</p> <p>13 to them and climb over them in the water?</p> <p>14 A I'm not sure. Probably -- they would</p> <p>15 be difficult to get over from the -- from the</p> <p>16 water.</p> <p>17 Q Did the buoys that you touched which</p> <p>18 were on land, did they spin when you touched</p> <p>19 them?</p> <p>20 A They did.</p> <p>21 Q Why do you believe it would be</p> <p>22 possible to climb over the ones that are on</p> <p>23 land and not the ones over in the water, given</p> <p>24 that they both spin?</p> <p>25 A It would just be easier by nature to</p>	<p>1 A I do.</p> <p>2 Q Why do you believe that?</p> <p>3 A So if you T-boned these with any -- I</p> <p>4 mean, they're a structure that are there.</p> <p>5 Anything that is not water could potentially</p> <p>6 damage a vessel.</p> <p>7 You'd have to run, you know,</p> <p>8 horizontal to the river from one side to the</p> <p>9 other to hit them head-on. That's -- that's my</p> <p>10 answer.</p> <p>11 Q Now, when you -- when you</p> <p>12 navigated -- when you went on your -- went on</p> <p>13 your airboat up to the buoys --</p> <p>14 A Mm-hmm.</p> <p>15 Q -- were you piloting that boat?</p> <p>16 A I was not.</p> <p>17 Q Was a DPS officer piloting the boat?</p> <p>18 A He was.</p> <p>19 Q Were you able to safely navigate</p> <p>20 around the string of buoys?</p> <p>21 A Numerous times.</p> <p>22 Q On any of the times that you went</p> <p>23 around the buoys, did the boat collide with</p> <p>24 either the buoys or with the anchoring blocks?</p> <p>25 A It did not.</p>

<p style="text-align: right;">Page 166</p> <p>1 Q Now, when you mentioned earlier that</p> <p>2 if the buoys would -- you mentioned if someone</p> <p>3 T-boned them, do you -- that could cause damage</p> <p>4 to a vessel. Is that -- would that situation</p> <p>5 occur if a vessel drove directly into the</p> <p>6 anchoring block or to the buoys?</p> <p>7 A Correct.</p> <p>8 And you obvious -- you'd have to</p> <p>9 have some headway on. You'd have to have some</p> <p>10 speed to really cause damage.</p> <p>11 Q What about navigation up and down --</p> <p>12 up or down the river?</p> <p>13 If a boat was traveling on the</p> <p>14 river, do you believe that the buoys are a</p> <p>15 hazard to navigation in that situation?</p> <p>16 A I do not.</p> <p>17 Q Did you -- when you visited the site</p> <p>18 of the buoys in Eagle Pass, did you observe any</p> <p>19 vessel collide with the buoys?</p> <p>20 A I did not.</p> <p>21 Q Did you observe any vessel colliding</p> <p>22 with the anchoring blocks?</p> <p>23 A I did not.</p> <p>24 Q Did the DPS officers who escorted you</p> <p>25 mention anything to you about observing</p>	<p style="text-align: right;">Page 168</p> <p>1 government, I was an expert in advising that</p> <p>2 process, not as a -- again, not as a lawyer --</p> <p>3 I'm not an attorney -- but as an agent of the</p> <p>4 government and who is named by statute to be a</p> <p>5 regulatory authority in that process, I am an</p> <p>6 expert in it.</p> <p>7 Q So you were a regulator that was part</p> <p>8 of this process? Is that what you're saying?</p> <p>9 A Correct. And an advisor, certain</p> <p>10 roles, for, you know, residents, to advise on</p> <p>11 how to obtain certain permits.</p> <p>12 Q But you didn't act as the city's</p> <p>13 lawyer in this process, correct?</p> <p>14 A No.</p> <p>15 Q And you didn't tell them they should</p> <p>16 seek legal advice from you; is that correct?</p> <p>17 A No. We do do regulatory authority</p> <p>18 and have the ability to -- let's say you</p> <p>19 installed something that wasn't permitted. We</p> <p>20 have the ability to fine you.</p> <p>21 My department has the ability to</p> <p>22 charge you with criminal process if the fines</p> <p>23 go unpaid.</p> <p>24 So it's a little bit of both.</p> <p>25 You kind of advise, but you're also a</p>
<p style="text-align: right;">Page 167</p> <p>1 collisions with the buoys?</p> <p>2 A They did not.</p> <p>3 Q Were the -- were the buoys easily</p> <p>4 visible to you?</p> <p>5 A Yes.</p> <p>6 Q How far away were you when you first</p> <p>7 observed them, approximately?</p> <p>8 A Maybe 5 to 600 -- 500 yards, maybe.</p> <p>9 400 yards, 400 yards-ish.</p> <p>10 You could see them from quite a</p> <p>11 ways away, bright orange and four feet tall.</p> <p>12 Q Do you believe it's possible for</p> <p>13 vessels to safely travel around the buoys?</p> <p>14 A Yes.</p> <p>15 Q Now, you -- you discussed earlier</p> <p>16 with Mr. Lynk about your -- your role as</p> <p>17 harbormaster with the city -- with the City of</p> <p>18 Gloucester, and you mentioned something to him</p> <p>19 about your expertise in the permitting process.</p> <p>20 Now, I think you said that</p> <p>21 you're a legal expert in that process. Do you</p> <p>22 recall saying that to him?</p> <p>23 A Yes.</p> <p>24 Q What did you mean by that?</p> <p>25 A I mean as an agent of the municipal</p>	<p style="text-align: right;">Page 169</p> <p>1 regulatory authority to -- to enact or enforce.</p> <p>2 Q But if you had legal questions, would</p> <p>3 you consult the appropriate attorneys for the</p> <p>4 city?</p> <p>5 A Yeah, or the state or -- yes,</p> <p>6 absolutely.</p> <p>7 Q And you would not suggest to city</p> <p>8 officials that they consult you about legal</p> <p>9 issues, correct?</p> <p>10 A No. I have -- no.</p> <p>11 MS. AL-FUHAID: I have no</p> <p>12 further questions.</p> <p>13 MR. LYNK: Some cross.</p> <p>14</p> <p>15 FURTHER EXAMINATION</p> <p>16 BY MR. LYNK:</p> <p>17 Q You were testifying about an</p> <p>18 opinion -- well, first, let me ask you, just to</p> <p>19 make it really clear, you've been testifying</p> <p>20 about a paragraph on page 32. And originally</p> <p>21 in your testimony you described it as a</p> <p>22 paragraph consisting of a definition received,</p> <p>23 but you were explaining subsequently that there</p> <p>24 could be aspects of this that were from you and</p> <p>25 aspects that were received definition.</p>

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<p>1 Do you recall the testimony?</p> <p>2 A I do.</p> <p>3 Q Might it be accurate that the first</p> <p>4 sentence of this paragraph, which says,</p> <p>5 "Finally, the buoys are not other structures</p> <p>6 under the RHA," and the concluding sentence,</p> <p>7 "The buoys do not affect the course, location,"</p> <p>8 and it goes on to finish that sentence, do I</p> <p>9 take it that those were yours?</p> <p>10 A That's correct.</p> <p>11 Q And then the remainder of this</p> <p>12 paragraph has -- refers to a couple of</p> <p>13 regulatory provisions and gives a quote or at</p> <p>14 least description of content of those, and it</p> <p>15 includes also a citation to a statute and a</p> <p>16 case citation; is that right?</p> <p>17 A Correct.</p> <p>18 Q Would you say that that content would</p> <p>19 be the received definition portion, or are you</p> <p>20 saying some of that also was yours?</p> <p>21 A No, that is -- that is the definition</p> <p>22 portion. You are correct in your statement.</p> <p>23 Q Okay.</p> <p>24 A I got a little confused earlier,</p> <p>25 because I had changed some stuff here, and --</p>	<p>1 part, it says, "do not affect the course of the</p> <p>2 Rio Grande River."</p> <p>3 Do you see that?</p> <p>4 A I do.</p> <p>5 Q And you explained generally what</p> <p>6 that's based on.</p> <p>7 A (Nods.)</p> <p>8 Q But I wondered, in determining that</p> <p>9 the buoys do not affect the course of the</p> <p>10 Rio Grande River, did you attempt to take into</p> <p>11 account any information that would look at, you</p> <p>12 know, what are the circumstances as of when</p> <p>13 they were first placed versus what are the</p> <p>14 circumstances now?</p> <p>15 A No. This is based on my</p> <p>16 accountability of what I saw now and where they</p> <p>17 are now.</p> <p>18 Q And did -- do you have an</p> <p>19 understanding of roughly when they were first</p> <p>20 placed into the Rio Grande?</p> <p>21 A I believe it's been just over a year.</p> <p>22 I think it was June of 2023, I think. I -- if</p> <p>23 my memory serves me correctly.</p> <p>24 Q Okay.</p> <p>25 Roughly a year ago from today?</p>
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<p>1 but looking back and reading it thoroughly</p> <p>2 again, that's a correct statement.</p> <p>3 Q Understood. Glad to clear it up.</p> <p>4 And in the second sentence of</p> <p>5 the paragraph, in the received definition, it</p> <p>6 appears to be quoting a regulatory definition</p> <p>7 of "structures," right?</p> <p>8 A Correct.</p> <p>9 Q And it gives a long list of things.</p> <p>10 It includes -- one of the things included in</p> <p>11 the list is "aid to navigation."</p> <p>12 Do you see that?</p> <p>13 A Correct.</p> <p>14 Q Is it your understanding that aids to</p> <p>15 navigation -- buoys can be aids to navigation?</p> <p>16 A Buoys are -- can be, yes, absolutely.</p> <p>17 Q Okay.</p> <p>18 So is it fair to say there may</p> <p>19 be circumstances where a buoy would be covered</p> <p>20 by this regulatory definition?</p> <p>21 A Yes. Per- -- my understanding is</p> <p>22 it's permanently affixed aids to navigation</p> <p>23 that never move.</p> <p>24 Q The last sentence, you were</p> <p>25 testifying about earlier that the buoys -- in</p>	<p>1 A Mm-hmm.</p> <p>2 Q And so if I understand your previous</p> <p>3 answer, you did not attempt to develop</p> <p>4 information that would look at, okay, you know,</p> <p>5 this was the conditions of the river very</p> <p>6 locally to this placement in June-July of 2023,</p> <p>7 and then we're going to compare that to what</p> <p>8 it's like in June or July of 2024?</p> <p>9 A I've seen photographs of where they</p> <p>10 were before on the Internet. I have not seen a</p> <p>11 firsthand account, but they're still placed in</p> <p>12 the same geographic location.</p> <p>13 They're just moved, which would</p> <p>14 be to the east, X amount of feet.</p> <p>15 Q Have you attempted to look at whether</p> <p>16 there have been any localized changes in</p> <p>17 current, for example, within the close vicinity</p> <p>18 of where the buoys were placed during this past</p> <p>19 year?</p> <p>20 A If it's not in my report, I didn't</p> <p>21 have an opinion on it.</p> <p>22 Q Okay.</p> <p>23 And when you talk about the</p> <p>24 "course," what is the course of the Rio Grande?</p> <p>25 What does that mean?</p>

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<p>1 A The direction of water flow.</p> <p>2 Q Direction of water flow.</p> <p>3 A (Nods.)</p> <p>4 Q Okay.</p> <p>5 So this is -- so this opinion</p> <p>6 is -- generally, it's based on your</p> <p>7 point-in-time observation when you made your</p> <p>8 site visit in June of 2024?</p> <p>9 A Correct. And subsequent videos of</p> <p>10 the Rio Grande and so on.</p> <p>11 Q Okay.</p> <p>12 So subsequent -- videos taken</p> <p>13 subsequently to the date of your site visit?</p> <p>14 A Yes.</p> <p>15 Q But not videos taken during the</p> <p>16 period prior to that?</p> <p>17 A I don't believe so.</p> <p>18 Q Okay.</p> <p>19 And the same would be true in</p> <p>20 terms of what you looked at regarding</p> <p>21 condition? It would be the day of your site</p> <p>22 visit and videos subsequent but not information</p> <p>23 prior?</p> <p>24 A No, I -- there's information prior</p> <p>25 from -- in the report. I think it's on page --</p>	<p>1 not having affected condition, you had earlier</p> <p>2 information -- historic information, as you</p> <p>3 called it, and information about the condition</p> <p>4 at the time of the site visit, and video</p> <p>5 information afterward, but not information</p> <p>6 during the period from roughly June 2023 up</p> <p>7 until before the site visit?</p> <p>8 A Correct.</p> <p>9 Q Can buoys cause very localized</p> <p>10 eddies, for example, in the water?</p> <p>11 A They can.</p> <p>12 Q Can they cause localized changes in</p> <p>13 direction of flow?</p> <p>14 A In -- changes in direction of flow?</p> <p>15 Q Yes.</p> <p>16 A No, in a river, no.</p> <p>17 Q Eddies, yes. Not changes in flow.</p> <p>18 All right.</p> <p>19 And is that -- is that -- would</p> <p>20 that be an example of something that you looked</p> <p>21 at specifically in determining that the buoys</p> <p>22 didn't affect the course or condition?</p> <p>23 A Yes.</p> <p>24 Q Okay.</p> <p>25 And again, you would have looked</p>
Page 175	Page 177
<p>1 Quite a bit of information on</p> <p>2 the prior, actually. Just let me find it here.</p> <p>3 (Pause.)</p> <p>4 A There's information here on page 11</p> <p>5 of Exhibit 1 from 2001, first time in recorded</p> <p>6 history, the Rio Grande was too weak to flow.</p> <p>7 And I also have information</p> <p>8 about an excursion here. In 2014, journalists</p> <p>9 tried to traverse the entirety of the</p> <p>10 Rio Grande River and were unable to due to the</p> <p>11 lack of water in the Rio Grande.</p> <p>12 It's called -- page 12.</p> <p>13 Figure 4 has a photo of a man walking a canoe</p> <p>14 down the river because it was too shallow to</p> <p>15 even canoe in certain parts.</p> <p>16 So there's quite a bit of</p> <p>17 information historically about the flow and the</p> <p>18 depths of the Rio Grande in this report.</p> <p>19 Q Those references are from prior to</p> <p>20 the first placement of this buoy barrier,</p> <p>21 right?</p> <p>22 A Correct.</p> <p>23 Q Okay.</p> <p>24 So -- so to -- so it would be</p> <p>25 accurate to say that in looking at the buoys</p>	<p>1 at that during your site visit, you would have</p> <p>2 looked at the video that was taken afterward,</p> <p>3 not evidence taken during the period from</p> <p>4 June 2023 up until the site visit?</p> <p>5 A I believe that's correct.</p> <p>6 Q You mentioned that you -- you</p> <p>7 testified about the number of permit</p> <p>8 applications you had been involved with and</p> <p>9 whether any were for buoys.</p> <p>10 Have you ever been involved with</p> <p>11 something that resembles this buoy barrier,</p> <p>12 like a thousand-foot connected string of buoys?</p> <p>13 A Nothing quite that long.</p> <p>14 Q Okay.</p> <p>15 Have you ever applied for a</p> <p>16 permit for any type of structure of that size?</p> <p>17 A No. Of buoys? No.</p> <p>18 Q Okay.</p> <p>19 Any type of structure that size?</p> <p>20 A Not quite a thousand feet. Probably</p> <p>21 200 -- 2- to 300-foot pier, pile-supported pier</p> <p>22 with a docking gangway attached.</p> <p>23 Q Okay.</p> <p>24 Have you -- for any of the buoys</p> <p>25 that you placed, were they moored with concrete</p>

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1 blocks?

2 A Yes.

3 Q Okay.

4 (Pause.)

5 Q You mentioned having -- earlier you

6 testified about pilings, the use of pilings,

7 like, for piers, for example?

8 A (Nods.)

9 Q Once those have been installed, is it

10 possible to remove them?

11 A It is possible.

12 Q Okay.

13 So when you say -- when you

14 refer to something as "permanent," you're not

15 saying that "permanent" means it could never

16 then be removed?

17 A Anything can be removed with a big

18 enough piece of equipment. I go off of whether

19 it needs to be permitted as permanent.

20 So when I say pilings are

21 driven, those are -- those are defined by the

22 Corps and by waterways regulations as

23 permanent, a permanent structure, not easily

24 removable, doesn't take a lot to disassemble,

25 so on and so forth.

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1 So that's how the law is in the

2 permitting process. Piling is a permanent

3 structure and needs to be permitted as such.

4 MR. LYNK: All right. I'll pass

5 the witness.

6 MS. AL-FUHAID: Nothing further.

7 MR. LYNK: All right.

8 (Discussion off the record.)

9 MR. LYNK: I do want an

10 expedited transcript.

11 MS. AL-FUHAID: I would also

12 like an expedited transcript.

13 (Discussion off the record.)

14 MR. LYNK: Let's get the rough.

15 What the heck.

16 MS. AL-FUHAID: I want the

17 rough, too.

18 (Whereupon, the proceedings

19 adjourned at 2:36 p.m.)

20

21

22

23

24

25

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1 CERTIFICATE

2 I, Jill K. Ruggieri, Registered Merit

3 Reporter and Certified Realtime Reporter, do certify

4 that the deposition of THOMAS CIARAMETARO, in

5 the above-captioned matter, on July 9, 2024, was

6 recorded by me; that the witness provided

7 satisfactory evidence of identification, as

8 prescribed by Executive Order 455 (03-13) issued by

9 the Governor of the Commonwealth of Massachusetts,

10 before being sworn by me, a Notary Public in and for

11 the Commonwealth of Massachusetts; that the

12 transcript produced by me is a true record and

13 accurate record of the proceedings to the best of my

14 ability; that I am neither counsel for, related to,

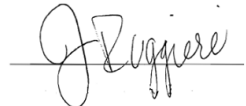
15 nor employed by any of the parties to the above

16 action; and further that I am not a relative or

17 employee of any attorney or counsel employed by the

18 parties thereto, nor financially or otherwise

19 inter action.

20 

21 Jill K. Ruggieri, RPR, RMR, FCRR, CRR

22

23 Transcript review was requested of the reporter.

24

25

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1 WITNESS: THOMAS CIARAMETARO

2

3 SIGNATURE PAGE/ERRATA SHEET

4

5 PAGE	6 LINE	7 CHANGE OR CORRECTION AND REASON
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<p style="text-align: right;">Page 182</p> <p style="text-align: center;">182</p> <p>1 _____</p> <p>2 _____</p> <p>3 _____</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 I have read the transcript of my deposition taken</p> <p>25 on July 9, 2024. Except for any</p> <p>corrections or changes noted above, I hereby</p> <p>Job No. CS6783958</p>	<p style="text-align: right;">Page 184</p> <p>1 Munera Al-Fuhaid, AAG</p> <p>2 munera.al-fuhaid@oag.texas.gov</p> <p>3 July 12, 2024</p> <p>4 RE: United States Of America v. The State Of Texas</p> <p>5 7/9/2024, Thomas Ciarametaro (#6783958)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 erratas-cs@veritext.com</p> <p>16 Return completed errata within 30 days from</p> <p>17 receipt of testimony.</p> <p>18 If the witness fails to do so within the time</p> <p>19 allotted, the transcript may be used as if signed.</p> <p>20</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 183</p> <p>subscribe to the transcript as an accurate record</p> <p style="text-align: center;">183</p> <p>1 of the statements made by me.</p> <p>2 Signed under the pains and penalties of perjury.</p> <p>Deponent: _____/____/2024</p> <p>3 THOMAS CIARAMETARO</p> <p>On this ____ day of _____, 202__, before me,</p> <p>4 the undersigned notary public, personally appeared</p> <p>THOMAS CIARAMETARO, who presented satisfactory</p> <p>5 evidence of identification, to wit,</p> <p>_____, and signed this document in my</p> <p>6 presence.</p> <p>7 _____</p> <p>Notary Public in and for _____</p> <p>8 My commission expires _____</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 Job No. CS6783958</p>	

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

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